

COMMONWEALTH SECRETARIAT
and INTERNATIONAL ASSOCIATION OF PROSECUTORS

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COMMONWEALTH SECRETARIAT

The Commonwealth is a voluntary association of 53 countries (soon to be 54) in six regions that support each other and work together towards shared goals in democracy and development. Its headquarters are in London. It embraces one third of the world's population.

Nations of the world's largest and smallest, richest and poorest make up the Commonwealth and are home to over two billion citizens of all faiths and ethnicities – over half of whom are 25 years of age or under. Member countries span six continents and oceans in six regions of Africa (18 – soon to be 19) to Asia (8), the Americas (2), the Caribbean (12), Europe (3) and the Pacific (10).

The Legal and Constitutional Affairs Division (LCAD) facilitates cooperation among member countries in the areas of constitutional and international law, the development and administration of systems of justice and in combating serious and transnational crime (through the Criminal Law Section).

This legal cooperation is a unique feature of the Commonwealth, made possible because member countries have similar legal systems, most being based on or greatly influenced by the common law.

The Division organises meetings of Law Ministers (the most recent being in 2008 in Edinburgh, Scotland) and of senior officials of law ministries. These meetings consider legal developments of common concern, consider model legislation developed to assist countries address common legal problems and seek to give effect to the legal aspects of the Commonwealth's fundamental values.

Member states are informed of national and international legal developments through a range of publications, the prime amongst which is the Commonwealth Law Bulletin.

The division also responds to specific requests from member countries for information and advice on legal issues.

The LCAD presently has two programs under way that may be of interest to this meeting.

MENTORING

As part of a Prosecutor Training Programme for prosecutors from the South Asian and Pacific regions (which included coursework at the University of Wollongong in May 2009) there is a Volunteer Mentoring Component operating for 12 months from 1 July 2009.

This provides each participant in the training program with a volunteer mentor, being a senior prosecutor affiliated with the Commonwealth Network of Contact Persons or the International Association of Prosecutors (IAP) – see below. The mentors are senior prosecutors from Australia and New Zealand. Prosecutors involved come from eight Pacific island nations and four nations in South Asia.

I commend the program to you and encourage those who are registered to make use of the facility.

In conjunction with this program, the Commonwealth Secretariat has also cooperated in the IAP's Prosecutor Exchange Program (PEP) and the first venture under the PEP was the Commonwealth sponsored placement of two senior prosecutors from the Republic of the Maldives with my Office for three weeks this year.

PROSECUTION DISCLOSURE

BACKGROUND

In May 2008 the Criminal Law Section of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat provided a key paper on current disclosure practice in criminal proceedings within and outside the Commonwealth (but not an exhaustive study of practices in all Commonwealth countries). It identified prosecution obligations and put forward a suggested program of work to meet the needs of member states in that regard.

The paper addressed:

- disclosure of material forming part of the prosecution case;
- material known to but not relied on by the prosecution ('unused' material);
- the consequences of non-disclosure;
- best practice and a possible legislative framework;
- the range of information to be included;
- the timing of disclosure;
- the situation of unrepresented accused persons;
- third party material;
- sensitive material;
- material held by foreign authorities; and
- recommendations to be made to Commonwealth Law Ministers.

At the biennial Commonwealth Law Ministers' Meeting held in Edinburgh on 7-10 July 2008 the Law Ministers received this paper. It identified a wide variation in prosecution disclosure practices across the Commonwealth in regard to material which forms part of the prosecution case as well as 'unused' material.

At the meeting the Law Ministers requested the Commonwealth Secretariat to fund a program of work that would:

- seek to identify international best practices;
- make such practices available to Commonwealth states in the form of model legislative provisions and detailed guidance;
- develop training programs on disclosure for law enforcement personnel, prosecutors and judges;
- encourage the principle of 'recording and retention' of information and material by investigators; and
- pay particular heed to the more problematic areas of disclosure, including the handling of sensitive material, third party material and defence disclosure obligations.

The starting point for such a program was to be a comparative study of the approach to disclosure in criminal proceedings in Commonwealth member states.

To that end, the Commonwealth Secretariat engaged my services to assist with a survey of the disclosure practices in Commonwealth member states, with a view to producing a research paper on comparative disclosure practices, international best practice within the Commonwealth and model policy and guidelines for prosecutors and suggested legislative provisions.

The first stage of this work is a questionnaire distributed to all member states. This will be followed by a series of regional consultations in select states. The Commonwealth Secretariat considers regional assessments to be crucial, as there is recognition that different problems confront different regions and there cannot be a 'one size fits all' approach. Any solutions must be tailored to meet the individual needs of the different member states of the Commonwealth.

SURVEY METHODOLOGY

The survey is aimed at all Commonwealth prosecuting agencies (with special attention to a select number) and is being conducted by means of a written questionnaire, analysis of prosecution and court case files relating to disclosure requirements (where appropriate) and the results of interviews with key stakeholders. It will build on the results of the consultations conducted so far for the purposes of the May 2008 report. It will also address a number of questions on legal issues relating to disclosure requirements in the following areas:

- legislation and/or policies dealing with prosecuting agencies' disclosure requirements;
- definitions of "disclosure" and other key concepts in disclosure legislation and criteria for the release of information to the defence;
- procedures relating to the disclosure of such evidence;

- any exceptions to the rules requiring disclosure;
- any controversies about disclosure that have been resolved by court proceedings;
- any obligations on the defence to disclose to the prosecution;
- any obligations on third parties;
- the impact of human rights legislation and constitutional provisions on disclosure;
- ratification and implementation of regional and international instruments relating to the accused's rights in a fair trial;
- availability of training for relevant personnel handling disclosure processes;
- degree of co-ordination between prosecuting agencies and the defence, as well as challenges and recommendations for best practice;
- representatives' own views as to the improvements that are needed within their jurisdictions' disclosure regimes; and.
- any financial and resource challenges encountered in disclosing evidence to the defence.

TIMING

The questionnaire was sent out to all 53 Commonwealth member states through the Commonwealth Network of Contact Persons and to some prosecuting agencies in October 2009. Based on the information received, seventeen countries from the six regions of the Commonwealth have been selected for closer analysis and consultation.

A preliminary research report will be submitted at the end of January 2010. A final research report will be submitted at the end of February 2010. The findings of the research survey will be included in the report. [These dates may be subject to change.]

COOPERATION WITH THE IAP

Mention has already been made of the Commonwealth Secretariat's cooperation with the IAP in the mentoring program and through the PEP. It does not stop there. The Commonwealth has also cooperated – and continues to work – with the IAP in its Global Prosecutors E-Crime Network (GPEN) project and especially in supporting workshops for prosecutors in combating cybercrime. One successful workshop was held in Bermuda in August 2009 and another is planned in Sri Lanka (for prosecutors also from the Maldives) in 2010.

INTERNATIONAL ASSOCIATION OF PROSECUTORS

The International Association of Prosecutors [“IAP”] was established at the United Nations offices in Vienna on 6 June 1995 and formally inaugurated in Budapest at its 1st Annual Conference and General Meeting in September 1996.

It is a non-governmental and non-political organisation, the first and only worldwide professional association of prosecutors. Its membership is presently comprised of 136 organisational members (being associations of prosecutors, prosecuting agencies and crime prevention agencies) and about 600 registered individual prosecutors and former prosecutors (and another 1,000 or so who are yet to formalise membership following recent changes to procedures) in over 130 countries or jurisdictions.

The IAP has consultative status with the Economic and Social Council (ECOSOC) of the United Nations and works in partnership with many international and regional organisations such as OSCE, OCDE, INPROL, Council of Europe, IBA, UNODC, UNDP, Commonwealth Secretariat, Ibero-American Association of Prosecutors, POGAR, Eurojust and many more. It maintains ongoing links with such as the ICTY and ICTR and the ICC (whose Office of the Prosecutor is an organisational member).

VISION

The vision statement of the IAP is:

The IAP is an International Community of Prosecutors committed to setting and raising standards of professional conduct and ethics for Prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights and improving international co-operation to combat crime. Its aim is to become a world authority for Prosecutors on matters pertaining to the conduct of criminal prosecutions and associated matters and to be an organisation of international repute and referral.

OBJECTS

The objects of the IAP are to be found in Article 2.3 of the Constitution and may be summarised as the promotion of:

- the effective, fair, impartial and efficient prosecution of criminal offences;
- high standards and principles in the administration of criminal justice in support of the rule of law;
- enhancement of those standards and principles generally recognised internationally as necessary for proper and independent prosecution;
- assistance to prosecutors internationally in the fight against organised or other serious crime;
- international cooperation in gathering and providing evidence, tracking, seizing and forfeiting the proceeds of crime, prosecuting fugitive criminals;
- measures for the elimination of official corruption;
- the professional interests and role of prosecutors and good relations internationally;

- the study of comparative criminal law and procedure and justice reform; and
- co-operation with other organisations to further these objects.

[These objects are expanded in **Annexure 1.**]

OFFICERS

The IAP elects a President, six Vice-Presidents and a Secretary-General and a General Counsel is appointed. They are members *ex officio* of its governing body, the Executive Committee. The Immediate Past President remains a supernumerary member for up to three years.

The Executive Committee consists also of elected “ordinary” members generally reflecting the regions of the world in which the IAP is represented. There are presently 22 such ordinary members and overall the Executive Committee is drawn from 30 countries.

The Secretary-General is the Chief Executive of the Association and manages its day-to-day affairs. The General Counsel provides advice and assistance on its working programs and coordinates the holding of conferences. The IAP has a number of working committees, a Senate and a Conflict Committee (its highest authority for the resolution of disputes).

CONFERENCES

The IAP has held Annual Conferences and General Meetings in Budapest (1996), Ottawa (1997), Dublin (1998), Beijing (1999), Cape Town (2000), Sydney (2001), London (2002), Washington (2003), Seoul (2004), Copenhagen (2005), Paris (2006), Hong Kong (2007), Singapore (2008) and Kyiv/Kiev (2009).

Future conferences will be held in The Hague (2010), Santiago, Chile (2011) and Thailand (2012).

Regional conferences are held annually in major regions of the world: Western Europe, Eastern Europe, Asia/Pacific (sometimes with the Middle East), Latin America and occasionally Africa. The last Middle East and Asia-Pacific Regional Conference was held in Dubai on 14-17 November 2009.

Attendance at conferences is open to:

- individual members of the Association;
- representatives of organisational members;
- observers invited by the Executive Committee.

(Observers may be relevant experts or representatives of organisations having purposes similar or allied to those of the Association. Any person wishing to attend as an observer should first contact the Secretary-General.)

PUBLICATIONS

In 1999 The IAP published its Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (“the Standards”). [The Standards are expanded in **Annexure 2.**]

The IAP publishes a Good Practice series (formerly “Best Practice”) that has seen booklets produced on:

- 1- Recommendations on Combating Use of the Internet to Exploit Children
- 2- Model Guidelines for the Effective Prosecution of Crimes against Children
- 3- Recommendations on Combating Corruption in Public Administration
- 4- Mutual Legal Assistance
- 5- Victims

The IAP has also published Standards for Protection and Security of Prosecutors, another example of the prescription of minimum standards to be achieved.

It has also published a Human Rights Manual for Prosecutors which is now in its second edition; an IAP History which is updated annually; and Standards for Prosecutors: An Analysis of the UK National Prosecuting Agencies.

MEMBERSHIP

The present annual (calendar year) fee for individual membership (present and former prosecutors) is US \$40.

Organisations wishing to join should contact the Secretary-General to negotiate terms in accordance with the Association’s protocol.

BENEFITS OF MEMBERSHIP

Organisational and individual membership of the IAP gives access to numerous benefits including:

- Membership of a global network
- Access to the IAP website and area restricted to members
- Receipt of the quarterly Newsletter including reports of IAP activities and announcements and articles of interest to the global prosecutor
- Access to the **Global Prosecutors E-Crime Network (GPEN)** training materials and contacts
- Eligibility to participate in Annual and Regional Conferences
- Eligibility for the IAP Granting Programme (to fund attendance at conferences)
- Access to the **Prosecutors Exchange Programme (PEP)**

- Opportunity to contribute to IAP projects and activities
- Access to IAP publications including the Human Rights Manual for Prosecutors and Good Practice Guides
- Opportunity to publish and distribute articles and papers for prosecutors.

Individual members' responses to the questions "why join the IAP" have included:

- To join a worldwide prosecutorial community and to support its growth actively.
- To belong to the premier professional association of prosecutors – well-known for its commitment to promote high standards and principles in the administration of criminal law.
- Being a part of a worldwide network of prosecutors, with access to up-to-date information about developments in the field of criminal law.
- Being part of an influential voice that is shaping the future of the prosecutors around the world.
- Belonging to the IAP shows that I operate to a high standard of ethics and professional conduct.
- Membership of the IAP is the way forward in credentialing and regulating this wonderful profession.
- Access to research on prosecutorial matters and development opportunities within the global prosecution network.

INFORMATION

Information about the IAP is available on its website: www.iap-association.org

The Secretary-General may be contacted at sg@iap-association.org

Annexure 1

OBJECTS OF THE IAP EXPANDED

Object a) to promote the effective, fair, impartial and efficient prosecution of criminal offences

This is in effect the IAP's mission statement. It embraces everything that the Association stands for. All the other objects can be seen as flowing from it. If the IAP were to succeed in promoting effective, fair, impartial and efficient prosecution everywhere, it would have achieved its purpose; but the reality is that there will always be room for improvement.

Object b) to respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948

The UDHR is reflected in numerous international, regional and national instruments, some of which either bind or guide the conduct of prosecutors.

The IAP sees respect for human rights of all who come into contact with the criminal justice system, including victims, witnesses and defendants, as a central plank of the prosecutor's work. To this end it has published its *Human Rights Manual for Prosecutors* (now in its 2nd edition) and will continue to be engaged in human rights training for prosecutors.

Object c) to promote high standards and principles in the administration of criminal justice, including procedures to guard against or address miscarriages, in support of the rule of law

In 1999 the IAP published its *Standards of professional responsibility and statement of the essential duties and rights of prosecutor (Standards)* which set out a series of minimum standards for adoption by prosecutors everywhere. These now stand alongside the United Nations' *Guidelines for Prosecutors* and the Council of Europe's *Recommendation (Rec 19) 2000 on the rôle of public prosecution in the criminal justice system (2000)* as key documents for the conduct and the status of prosecutors. In 2008 the UN expressly endorsed the IAP's *Standards*.

The IAP has been and will remain active in encouraging prosecuting services to conduct themselves in accordance with international standards, thereby reducing the risk of miscarriages of justice (which, when recognised, must be addressed).

Object d) to promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences

Having published its own *Standards* the IAP continues to work independently and with others to promote work which supports compliance with international standards and norms. The independence of the prosecution process from inappropriate influence is given prominence.

Object e) to assist prosecutors internationally in the fight against organised or other crime, and for that purpose:

- *to promote international co-operation in gathering and providing evidence; in tracking, seizing and forfeiting the proceeds of serious crime; and in the prosecution of fugitive criminals; and*
- *to promote speed and efficiency in such international co-operation*

One of the reasons for the foundation of the IAP was the perceived rising threat from organised and other transnational crime. Accordingly, the IAP has been active in addressing the many issues which arise for prosecutors in dealing with organised and other major crime. Increasingly this has a transnational element. To that end the IAP has worked with others, and in particular the United Nations, to promote activity to combat transnational organised crime. Importantly, it also seeks, through its own publications and activities, to achieve greater co-operation between prosecutors and increased speed and efficiency in the work of prosecutors internationally. It is ideally placed to facilitate such measures.

Object f) to promote measures for the elimination of corruption in public administration

The IAP has run conferences, produced recommendations and worked with the United Nations on eliminating corruption in public administration. It is committed to the view that it is impossible for prosecutors to carry out their duties properly if there is corruption evident in the criminal justice system or affecting its operations. It goes further in asserting that society itself cannot function to the benefit of its citizens if corruption of public officials is seen as an accepted part of life.

Object g) to promote the professional interests of prosecutors and to enhance recognition of their crucial role in achieving criminal justice

The IAP is the first and only international organisation dedicated solely to the encouragement, promotion and support of prosecutors. As such it takes steps to act where it can in response to requests for assistance from prosecutors around the world. Such assistance may take the form of a presidential message of support, help with training, or creating exchange opportunities for prosecutors or assistance with requests for information.

Object h) to promote good relations between individual prosecutors and prosecution agencies; to facilitate the exchange and dissemination among them of information,

expertise and experience; and, to that end, to encourage the use of information technology

The work of prosecutors increasingly has an international dimension to it. However, it is not just in international work that contact between prosecutors can be beneficial. The IAP seeks, through its conferences, publications and projects, to facilitate good contacts between all prosecutors and the development of understanding and expertise through effective communication between colleagues from different jurisdictions.

Object i) to promote examination of comparative criminal law and procedure and to assist prosecutors engaged in justice reform projects

The IAP works independently and with others to ensure that there is an understanding of international standards. It also seeks to demonstrate the need for prosecution services to work in accordance with such generally accepted norms and that they are implemented.

Object j) to co-operate with international and juridical organisations in furtherance of the foregoing objects

The IAP works with the United Nations, the European Union, the Council of Europe, the International Criminal Court, Interpol, the International Bar Association, the International Legal Assistance Consortium, the International Bureau for Children's Rights, prosecution services and others in furtherance of its objects. It will continue to explore links with international and juridical organisations both to improve the performance of criminal justice systems and to enhance the position of the IAP itself.

Annexure 2

STANDARDS OF THE IAP EXPANDED

An important point to note about the Standards is that they are the minimum standards to be achieved by all prosecutors. They are not high ideals to be aimed for. In mathematical terms, they are the lowest common denominator. More simply, they should be thought of as a floor upon which to build, rather than a ceiling at which to aim.

The Standards are promulgated in accordance with the Object (d) of the IAP to:

“... promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences”.

At the 17th session of the UN Commission on Crime Prevention and Criminal Justice in Vienna in April 2008 a Resolution, to which was annexed the Standards, called for strengthening the rule of law through improved integrity and capacity of prosecution services and States parties were requested to take the Standards into consideration when reviewing or developing their own prosecution standards.

Another important point to note about the Standards is that they are short. That is important because it demonstrates that they are a distillation of the principles considered important by the prosecutors of the world. They are not cluttered with detailed rules and guidelines, subject to numerous qualifications and exceptions. They paint a simple picture and leave you to responsibly fill in the detail.

The Standards are as follows:

1. Professional Conduct

1.1 Prosecutors shall :

at all times maintain the honour and dignity of their profession;
always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
at all times exercise the highest standards of integrity and care;
keep themselves well-informed and abreast of relevant legal developments;
strive to be, and to be seen to be, consistent, independent and impartial;
always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights.

2. Independence

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be :

transparent;
consistent with lawful authority;
subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.
2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. Impartiality

Prosecutors shall perform their duties without fear, favour or prejudice.

In particular they shall:

carry out their functions impartially;
remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest; act with objectivity;
have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. Role in criminal proceedings

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows: where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;

b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights; when giving advice, they will take care to remain impartial and objective;

d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence; throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;

when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore; preserve professional confidentiality; in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights;

and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;

safeguard the rights of the accused in co-operation with the court and other relevant agencies;

disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;

examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;

refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;

seek to ensure that appropriate action is taken against those responsible for using such methods;

in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. Co-operation

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall: co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. Empowerment

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled :

to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;

together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;

to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;

to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;

to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;

to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;

to objective evaluation and decisions in disciplinary hearings;

to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status; and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

I refer here to some only of the **issues that arise from the Standards**.

Article 1 prescribes a number of forms of conduct for prosecutors and, importantly, in paragraph (f) refers expressly to the prosecutor's protection of an accused person's right to a fair trial. That is in many ways our *raison d'être* – it is why we do what we do. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights require that trials be fair – to both sides.

A guide to the requirements of a fair trial may be found in the international and regional instruments and domestic legislation applying in various jurisdictions. Fairness in many situations will be a matter of judgment, but this Article obliges us to pursue it. We must do so with due regard to the human rights of those involved. We must do so always in a way that is in the public interest (an expression that does not mean the same as “of public interest”, or in the interests of a section of the public).

Article 2 addresses the independence of the prosecutor, but it is qualified. The degree of independence of prosecutorial decision making from government varies considerably across the globe. In some jurisdictions the prosecuting authority is completely independent of government in its decision making; in others it is intimately bound up in the political functioning of government; and there are all shades in between. The Article is capable of dealing with those shades of independence. Where it is qualified, however, there is an obligation to ensure that the interference with that independence is accountable.

Article 3 requires impartiality in the way in which we carry out our functions. Paragraph (e), together with Articles 1 (f) and 4.3 (d), requires the prosecution to disclose to the accused in a timely manner all material within its knowledge that may be relevant to the issues to be tried, whether that material favours an outcome for the prosecution or for the defence. This is a vitally important requirement. There is much pressure these days in many jurisdictions for the defence to make at least limited disclosure to the prosecution and we cannot reasonably expect that to occur other than in a spirit of cooperation between the parties. That spirit will not be engendered unless there is trust – unless it is clear that the prosecution, which has a favourable balance of power, is making full disclosure in the first place.

Article 4 is a more specific provision affecting the conduct of proceedings by prosecutors and requires us to do certain things. Again, it recognises that there are differences between our various agencies. Some are engaged in the investigation of crime, some have no investigatory role at all. In all circumstances the Article casts upon us obligations to act objectively, impartially and professionally. Article 4.2 (d) requires us to know when we have a viable case. That in turn requires us to have procedures in place for the continual screening of cases – continually assessing the strength of the evidence and the probability of conviction in due course. Article 4.3 (b) refers to victims of crime. Further guidance may be had from the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Victims are an increasingly vocal group in society, their position (at least in the view of many people) having been overlooked for far too long. Article 4.3 (h) addresses the decision to prosecute, itself, and the alternatives that may be available. Diversionary schemes

are becoming more popular as the costs and delays inherent in criminal trial proceedings increase and ideas of restorative justice take hold.

Article 5 reflects another reason for the existence of the IAP. Cooperation is our goal.

Article 6 (rather evocatively entitled “Empowerment”) refers in part to what we get out of prosecuting and in part to what our communities should provide for us. There is an ongoing serious issue of resourcing included in this Article. On the one hand governments are very fond of emphasising to their constituents the important role played by the prosecution in the maintenance of social order; on the other hand they are very fond of withholding adequate resources from us in order to fund activities that will more directly translate into votes at the time of the next election. Those of us who suffer in this way must maintain our pressure for adequate resources to do our jobs in a completely professional manner.