



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

“Re-Engaging the Judiciary”

*An Address by the Director of Public Prosecutions, Mr Christopher Pryde, for the
Fiji – New Zealand Business Council Conference – 28 June 2014*

at the Grand Pacific Hotel, Suva

The Honorary Consul for Fiji, Mr Richard Hatherly;

The Permanent Secretary for Industry and Trade, Mr Shaheen Ali;

The Acting Head of Mission for New Zealand, Mr Mark Ramsden;

The President of the Fiji NZ Business Council Mr Ngamoki-Cameron;

The President of the NZ Fiji Business Council, Mr Chandar Sen;

Members of the Fiji – New Zealand business community;

Distinguished Guests;

Ladies and Gentlemen;

1. First, let me thank the President and the Executive Committee of the Fiji/NZ Business Council for inviting me to speak to you this morning.

2. I want to begin by saying something in general terms about the criminal justice system and the Office of the Director of Public Prosecutions. I then want to say something about how the decision to prosecute is made with particular reference to the Chaudhry and Driti cases, and then conclude with some final comments on the issue of re-engagement.

3. It is a truism to say that the criminal justice system is important for all of us. Of course, we all know this. Without a properly functioning, well resourced and financed, strong and efficient independent justice system, we would suffer a lack of individual security both for our person and for our property. The need for a strong independent justice system is perennial; we need it regardless of the government of the day; regardless of whether that government is democratic. A break down or interruption in the justice system causes uncertainty and unless corrected, it ultimately leads to chaos. Without confidence in the administration of justice, people become tempted to take the law into their own hands. Instead of litigating a matter in the courts, they seek alternative means of redress, instead of complaining to the police, they complain to others to resolve their problems. Without a robust system of justice, business cannot make long term investment because there is no predictability and cases are decided on an ad hoc basis, if they are decided at all.

4. It is all the more important therefore in times of uncertainty that the justice system is protected and strengthened. It is equally important that the justice system maintains its independence from the government of the day and is free to function unimpeded and unconcerned with the politics of the moment.

5. The past seven years have not been easy. The judiciary have had to endure unprecedented and unjustified sanctions by the Australian and New Zealand Governments; we have had judges refused visas for urgent medical assistance for their children; we have had a campaign to undermine the judiciary's ability to perform; we have had attempts to exclude us from international conferences; we have had smear campaigns against individual judges through certain blog sites which then are picked up by mainstream media.
6. What we have not had however is any allegation of compromise or judicial impropriety being supported by a single shred of evidence. We have even had one European country based in Suva attempting to directly interfere with the prosecutorial decision making process.
7. Any interference with the independence of the criminal justice system or the operation of its functions from whatever source will always be resisted.
8. We now have in place a Constitution that further guarantees the independence of the judiciary and the Office of the DPP. What this means in relation to criminal prosecutions is that it is the DPP that makes a final decision in relation to whether a prosecution is brought before the courts.
9. That independence is summed up at section 117 of the Constitution which sets out the powers of the Director of Public Prosecutions namely to:
 - i. institute and conduct criminal proceedings;

- ii. take over criminal proceedings that have been instituted by another person or authority; and
 - iii. discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority.
10. The decision making process in each of these three situations is completely independent of any direction from any person, even a Minister of Government, including the Attorney-General as chief legal advisor to Government. This means that, subject to the power being exercised in good faith and not for an improper purpose, the decision to institute, take over, or discontinue is for the Director of Public Prosecutions alone and is not reviewable.
11. The decision to prosecute is made on objective criteria in the public interest and involves a two-step process.
12. First, is the evidence sufficient to sustain the charge; in other words, is there a reasonable prospect of a conviction? This involves an assessment of the reliability of the evidence and the likely defence case. The test is whether a court, properly directed in accordance with the law is more likely than not, to convict the accused of the charge alleged.
13. Second, is it in the public interest to prosecute? As Lord Shawcross, the former Attorney-General of England said: "It has never been the rule in this country - I hope it never will be - that suspected criminal offences

must automatically be the subject of prosecution.” This applies equally in Fiji today.

The Public Interest Factor

14. How then were these criteria applied to the Chaudhry and Driti cases?
15. In both of these cases the first step in the process was satisfied; there was sufficient evidence touching on each element of the offence that together provided a reasonable prospect of conviction if the matter went to trial. The matters therefore from an evidentiary perspective were non-contentious; there was clear, objective evidence upon which a court properly directed could convict. The question in both cases however was one of the public interest. In spite of there being sufficient evidence to convict, was it in the public interest to continue?
16. The public interest factors in favour or against prosecution are summarised in Fiji’s Prosecution Code which in turn is based on similar codes used throughout the common-law world, in particular, England, and they concern such factors as whether the offence is trivial, whether the offence is likely to result in a significant sentence, whether violence was involved, whether the accused was in a position of authority or trust; whether restitution has been offered, and so on. The list is a guide for factors to consider when making a decision as to whether it is in the public interest to prosecute.
17. In the Chaudhry case representations were received from Mr Chaudhry’s lawyer and the original trial date was vacated in order to consider them. Ultimately, I made a decision that the factors favouring

continuation of the prosecution outweighed the factors against. The same public interest test process was applied in the Driti case and both men were then committed for trial.

18. But one factor that had absolutely no bearing on the public interest factor was whether the cases were political cases. Both the Chaudhry and Driti cases could be seen as political in a broad sense (and they were often described as such in the media) but they were only political in the sense that, in the case of Mr Chaudhry, he was a politician intending to stand in the elections and in the case of Mr Driti, that his intentions were political by wanting to subvert the government.
19. The decision to prosecute was not a political decision nor did politics influence the decision. There was no consultation with anyone outside the Office of the Director of Public Prosecutions and, importantly and significantly, no consideration was made at any time to the political consequences of a prosecution.
20. The reason I wish to emphasise this point is because yet again the issue of the independence of the judiciary has been raised by the New Zealand Government through their latest Travel Advisory which states that the Fijian government “has a degree of influence over the judiciary”. This is simply untrue. I note also that Fiji is not the only country in the region to take issue with the accuracy of NZ Government travel advisories.
21. The unsubstantiated allegation that the Fijian Government has a degree of influence over the judiciary has no basis in fact and should be ignored. By implication this necessarily also calls into question other

NZ Government travel advisories which should likewise be treated with scepticism.

22. I will leave this point with one final observation. The appointment of judges in Fiji is outlined under section 106 of the Constitution which states that it is the President that appoints following a recommendation from the Judicial Services Commission and following consultation with the Attorney-General. This is a much more open, transparent and accountable process for the appointment of judges than Fiji has had in the past. It is interesting to note the contrast with judicial appointments in New Zealand where it is the Attorney-General alone that advises the Governor-General on the appointment. There is absolutely no oversight, transparency or accountability in the NZ process of judicial appointment.

Re-Engagement-the Way Forward

23. It is difficult to see how there can be meaningful and constructive re-engagement between Fiji and New Zealand if the judicial branch of the Fijian government continues to be ignored. Re-engagement requires more than just being on speaking terms with the executive branch of government. It requires the NZ government to treat the judicial branch of the Fijian Government with equal respect. Where the New Zealand Government have concerns, these should be raised in an open and constructive manner with the appropriate authorities, in the case of the judiciary, this would be the Chief Justice. That is yet to occur. No serious re-engagement with any country can occur unless judicial independence is fully respected.

24. In closing, I want to assure you that as business leaders, property owners, investors, tourists, and citizens of Fiji that we do have a criminal justice system that, despite challenges, is open, independent, and fully focused on ensuring justice to all under the time-honoured and universal principle applicable to all justice systems in the world; that the guilty shall be convicted and the innocent shall be acquitted. This, ladies and gentlemen, is a principle worth fighting to maintain.

I thank you for listening to me and I wish you well for the remainder of the conference.

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