



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

An Address by the Director of Public Prosecutions, Mr Christopher Pryde, to senior police officers at the Fiji Police Force Command Group Retreat at the Pearl Resort, Deuba on Saturday 16th January 2021.

Acting Police Commissioner; Mr Rusiate Tudravu

Acting Deputy Commissioner; Mr Itendra Nair

Assistant Commissioners;

Senior Officers of the Fiji Police Force including representatives from the Australian and New Zealand Police Forces.

Introduction

First, may I wish everyone a very Happy New Year and may I also record my thanks to the many police officers who spent Christmas and New Year working whilst the rest of us were enjoying a holiday and dozing off in front of the tv after having eaten too much Christmas dinner.

The life of a police officer is never easy and the public is often quick to criticise and fails to appreciate that it is the police that are out in all forms of weather and at all times ensuring our collective safety and security. The dedication that is shown by police officers to their duty is often quickly forgotten by knee-jerk reactions when something goes wrong.

The good work you do is often unseen, it is often dangerous and it is always hard so, I would like to start by acknowledging your service to the country and to the people of Fiji and to let you know that your work is appreciated.

I would also like to thank you for the support you provide to my office, the Office of Director of Public Prosecutions in terms of the investigations you complete, the suspects you apprehend, the exhibits you protect, and the convictions that you help us to get in court.

The work that we do is incredibly important and everything we do has a consequence far beyond us as individuals. That is why it is important to maintain our high professional standards at all times so that the public continues to respect the criminal justice system and the work that we do in the public interest.

Our professional standards apply not just to the work we do but the way we do it; the way we interact with the public; the way we behave in private; the way we interact with each other; the way we dress; and the way we talk.

The relationship between the police and the DPP's office is an important one and so I am grateful to the acting police commissioner for giving me the opportunity to talk to you today and to outline what I see are the issues in the relationship between the police and the DPP's office that need to be addressed. I intend to be candid but constructive where there is criticism.

I thought I would concentrate my talk around three questions:

- What should we keep on doing?
- What should we stop doing?
- What should we start doing?

What should we keep on doing?

1. We should keep on meeting regularly and this should be at all levels.

The Investigating Officer needs to be with the DPP officer all the way through the court process. It is not sufficient for the IO to think that his or her job stops when the police docket is handed over to us. We are only as good as the evidence in the docket. If there are gaps in the evidence the IO must be on hand to rectify those gaps. This means the IO must attend witness conferences when called, attend the Pre-Trial Conference and attend the trial. They must ensure the witness summonses have been served and that the witnesses are ready to

attend at court on time. The case we bring to court is your case. The conviction we get is your conviction. When we fail to gain a conviction because a witness doesn't appear or the evidence is lost or contaminated, all your good work and the work of the rest of the team is wasted. Let's continue to work together. Our work is your work.

The DPP, the Assistant DPPs and the senior police officers. We meet on an ad hoc basis usually when something has gone wrong. I would like to propose that we keep meeting but on a more regular basis. We have already started regular quarterly meetings with police, the DPP's Office, the judiciary and corrections. These meetings are helpful and constructive. Let's continue to meet and discuss.

2. We should keep on communicating training needs.

We have two 6-week training courses this year focusing on police investigators. These will, hopefully, address gaps in investigations that we have identified through the court process, often having had the gaps pointed out to us by the judges or by defence counsel and which have led to acquittals.

3. We should keep on debriefing each other by communicating successes and problems from court.

Last year, I instructed all legal officers to return the police docket to the Director CID directly rather than through intermediaries. The docket contains a letter from the DPP officer explaining what has happened in court and particularly highlights any problems especially if we have had to file a nolle prosequi and the reason for the nolle. It is hoped these letters will be read and used for a debrief with the IO, the Crime Officer and the DPP officer immediately after the case so that mistakes can be learnt. Let's continue to talk. Let's continue to review.

4. We should keep on targeting the profit from crime. Last year our Office established a Proceeds of Crime Task Force. Last year we also had Fiji's first unexplained wealth declaration handed down by the court; \$28,000 from the wife of a suspected drug dealer who could not explain how she had come by the money or, indeed, why it was suspiciously wrapped up in burger king papers hidden in her vehicle.

The proceeds of crime can be recycled through the criminal justice system back to us from seizure by police through a restraining application filed by us in court and then a forfeiture application in court. If granted, the proceeds then go into an account in the DPP's office and the funds are disbursed after approval by the AG on the recommendation of the Anti-Money Laundering Council to agencies such as the police to assist with investigating and prosecuting money laundering offences.

It is estimated that the funds from illicit drug activities are more than \$10 million per annum and local traffickers can make between \$5,000 and \$10,000 a day from the sale of cocaine and meth in the domestic market. Drugs are a huge source of proceeds of crime.

We need to continue our focus on the proceeds of crime. We need to continue to hit drug dealers where it hurts them the most and that is by removing the profit they make from their illicit trade. Without the profit, they are not interested in the crime.

Our legislation on proceeds of crime and money laundering is the best in the region and we must continue to use it. When a criminal investigation is launched, there should be an additional and parallel investigation into what property has been used in the commission of the crime. This property is tainted property and can be seized, forfeited and sold all to the benefit of the State.

Let's keep on targeting the profit from crime.

What should we stop doing?

5. We should stop enabling bad police officers. Each month our office publishes statistics on the filing of indictable offences in the High Court. These statistics include police officers regardless of the offence since offences involving police officers are always prosecuted by the DPP's office.
6. There are not many as a proportion of the total police cadre but they are significant and they do affect the public's perception of the police. As the Police Commissioner has said before, "we will not tolerate bad cops". This also means that bad cops should not be enabled. If an officer is

breaking the law, they should be reported. We have had too many cases where colleagues have tried to assist police officers who have broken the law and, in the process, broken the law themselves by advising them on what should be in the statement knowing it is false. We have had cases where police colleagues have tried to cover for police officers by falsifying their own statements. This amounts to perverting the course of justice and police officers have been charged for this.

7. It is vital that the public has trust and confidence in the police force and, by extension, the criminal justice system. We must not be seen to be covering up for each other and we must be honest with the public when things go wrong. Most officers are good, some are bad just as in any organisation but we must not enable a culture where the public perceives us to be protecting our own.
8. To this end, I am hoping some consideration could be given to the establishment of an independent police complaints authority. The lawyers already have one in the form of the Independent Legal Services Commission and it has enhanced the public's confidence that complaints against lawyers are dealt with properly and professionally.
9. Other jurisdictions in the region such as NZ also have an independent police complaints authority which is known as the Independent Police Conduct Authority. It works well and has significantly altered the NZ public's perception of the police. The establishment of such an authority in Fiji could be at minimal cost but would greatly enhance public confidence in the police. We must deal with bad police officers transparently and honestly.

We must stop enabling bad police officers and we must stop allowing a minority of officers to damage the reputation of the majority of police officers and the criminal justice system.

What should we start doing?

10. We should start improving the quality of the police docket. This means that the quality of the evidence contained within the docket needs to be improved.

There are three main areas that need greater attention and that cause our cases in court to fail:

- i. The caution interview;
- ii. The preservation of the exhibits (including protecting the chain of custody); and
- iii. The identity of the suspect.

The Caution Interview

11. There is nothing wrong with using the Judge's Rules. They should be read by every police officer and reread every year. They should be followed during the caution interview even if you draw attention to the other rights of suspects stated under the Constitution.
12. Recently, during caution interviews I have noticed a tendency for police officers to say too much. I have read caution interviews where police officers have told the suspect that they do not have to say anything but "there will be consequences if you remain silent". Such a caution makes the voluntariness of the statement a nullity and it is of no use to us. There are no consequences if a suspect remains silent. There are only consequences if the suspect waives his or her right to silence.

May I read what the Judge's Rule on this point says:

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:-

"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

This is sufficient in terms of the right to silence.

13. We should also start the investigation prior to the arrest and caution interview. At the start of the caution interview, the police should be in a position to put the allegation to the suspect along with the evidence. If there is insufficient evidence to suspect an indictable offence has

been committed, there can only be an arrest in limited situations. Therefore, we should be encouraging a greater use of inviting suspects to make a voluntary statement. A person making a voluntary statement is not under arrest and must be reminded that they are free to leave at any time. If the suspect is going to give incriminating evidence, then the interview should be paused whilst the standard caution and right to silence is given. If the suspect is appearing at the police station voluntarily and not under arrest, the 48-hour rule which is being vigorously enforced by the courts, does not apply. This takes away pressure from police and allows more time.

The Preservation of Exhibits

14. This includes preserving the exhibit in a fit state for trial and protecting the chain of custody from seizure to storage to trial. We must start improving our systems. Too often, police officers do not record statements from the person who has seized the item from the suspect or from the person who has received the item for storage. This gives the Defence an opportunity to argue that a third party has interfered; that the item is not the item found at the scene or that someone has tampered with the item. If the chain of custody is not protected, our case may fail.

11. We had a case recently which broke both the chain of custody and the requirement to preserve the exhibits for trial. The exhibits were removed, without authorisation, from a safe secure place where they were being stored and were placed in an insecure place where they were damaged by water, rats, and cockroaches. Not only, was crucial evidence being lost to nature but the officer that moved them provided no record of having moved them. So, the obvious question arises at trial – are the exhibits that are being produced, the same exhibits that were seized?

We also need to preserve exhibits so that they may be returned to the rightful owner at the conclusion of the case unless, of course, they are drugs in which case there is a procedure for their destruction.

The identity of the Suspect

12. We must urgently start improving in this area. The procedure for the conduct of an ID parade is contained in the Force Standing Orders. The procedure should be well known to all officers and rigorously adhered to. Some officers do this well, a few extremely well, most, poorly. A failure to properly follow the correct procedure means that the identity evidence may not be allowed and, in all likelihood, we will lose our case or the matter has to be withdrawn. Defence counsel are becoming more adept at identifying our deficiencies in the procedures. The courts are accepting defence submissions that failure to strictly follow the procedures should mean acquittal. Defence lawyers know the procedures, so should we.

Conclusion

13. Our case in court is only as good as the evidence contained in the police docket. The journey from the investigation of a criminal complaint to the arrest of a suspect, to the filing of the charge, to the matter being called in court, to the trial and subsequent conviction is a journey we take with you.
14. It is not a rally where the police drop out after the baton is handed to us to continue the race. It is a journey where we must be accompanied at every step of the way by the police until conclusion in court.
15. I have every confidence that we can continue to build on the successful relationship between the police and the DPP's office and I look forward to continuing the discussion.

Thank you.

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