

2.7 Deputy T.M. Pitman of the Attorney General regarding the dismissal of a court case through 'lack of evidence':

Will the Attorney General advise under what circumstances a case in court may be dismissed through lack of evidence?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

In general, a case may be dismissed through lack of evidence if the judge or judges in question are not satisfied that the evidence available to them is sufficient to prove to the correct standard the facts that must be proved in order to justify a conviction in a criminal case or the relief sought in a civil case. In a criminal case, the evidence adduced by a prosecutor must establish the facts upon which a charge is based beyond a reasonable doubt. This is a high standard. It is, therefore, sometimes the case that a court will determine at an early stage of the prosecution that the evidence is not sufficient to establish the guilt of the accused. This often occurs at the end of the prosecution case before the defence witnesses are called. Sometimes the prosecution will decide not to proceed with a charge and in those circumstances offers no evidence.

2.7.1 Deputy T.M. Pitman:

Obviously I appreciate the advice of the Attorney General cannot be asked about specific case, so if I could give him a hypothetical question. How would this work out: should I attack my elderly neighbours in their home tonight with large steel ball bearings fired from a catapult ...

The Deputy Bailiff:

Deputy, are you able to tell Members that this is completely hypothetical?

Deputy T.M. Pitman:

Yes, Sir, because I have not done it.

The Deputy Bailiff:

No, the circumstances, do they reflect circumstances that have taken place actually in court?

Deputy T.M. Pitman:

I am giving the nearest example I can without going to an actual case in court, Sir.

The Deputy Bailiff:

The reason why specific decisions of the courts are not the subject of debate generally in the Legislature is that Members of the Legislature accept that the courts are independent and are not swayed or liable to be swayed by political concerns. That is a fundamental part of the European Convention on Human Rights and of course historically entrenched in our law as well. Of course, one or more judicial decisions can give rise to discussion in this Assembly as to whether the law should be changed or perhaps in an extreme case as to whether the judge should cease to hold office but it is not an appropriate question to put to the Attorney General who is not responsible in any event for the performance, if I can put it that way, of the Judiciary. Now, if that helps you in framing your supplementary question..?

Deputy T.M. Pitman:

You are always helpful, Sir. Thank you. How can I pitch my question? As I believe there are victims who have rights which are more important than perpetrators of crimes, perhaps the Attorney General or indeed yourself, Sir could then advise how can a member of the public go about finding out how a case can be dismissed, when the police will not tell them and the Law Officers will not tell them?

[10:15]

How does a member of the public find out why they cannot know the person who has attacked them and has been found with weapons can have the case dismissed? I cannot put it any other way, Sir, and I am doing my best.

The Attorney General:

For obvious reasons, there is no entitlement for anyone to know the full details as to why the prosecution has taken a decision in a particular case or indeed why a court has. Quite often the material before the prosecution and the court is of an inherently confidential nature. One might anticipate matters set out for example and purely hypothetically in a background report or in a psychological assessment. Those kind of things simply cannot be put into the public domain and told to people who were not involved in the decision-making process. Generally speaking though, someone who is involved in the case might be told as much as the prosecution reasonably feels that it can tell them in the circumstances. But there is no right to know those kind of matters.

2.7.2 Deputy T.M. Pitman:

I thank the Attorney General for his answer. Could he explain or hopefully give assurances that when a case reaches the court all the evidence of the case would have been transmitted from the police to the court. So, all that evidence will be available so that that decision is made in light of the full information.

The Attorney General:

There is of course always the possibility that mistakes are made and that information that should be produced from one part of the judicial system to another does not make it. In the vast majority of cases, and I am not aware of any other case, full information is provided by the police to the prosecution services and the prosecution takes its decision in the light of that full information. The prosecution adduces the evidence before the court that it believes it is appropriate to do so.

2.7.3 Deputy M. Tadier:

Can the Attorney General confirm that cases being dismissed once they have already gone to court should be a rare occurrence, presumably especially if they are ones in which the Crown is prosecuting because of course there has been already an evidential test which takes place before any prosecution is pursued, which would presumably have to be more than a 50 per cent certainty of winning the case in most circumstances.

The Attorney General:

I would happily refer Members of the Assembly to the code on the decision to prosecute which can be found on the Law Officer's Department website, which explains the 2-stage test that a prosecution decision falls to be taken under. There is an evidentiary test and then there is a public interest test. Generally, before a charge is brought it is the case that the person making the prosecution decision will have decided that the evidentiary test is passed and that the public interest is in favour of the prosecution being brought. However, as time progresses, the prosecution's understanding of the evidence or indeed understanding of the public interest may evolve and change and it could therefore be the case that a charge brought could subsequently not be proceeded with.

Deputy T.M. Pitman:

I do not think I am going to get where I need to be so I will have to find another route, thank you.