

TERMS OF REFERENCE FOR SENIOR CROWN COUNSEL, IN THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

Background

Senior Crown Counsel will be the title of the post which is being advertised. The Officer will be deputed to provide additional support to the Director of Public Prosecutions.

The filling of this post will not affect the workloads of other posts in the ODPP, or any other post in the other Government Departments. Montserrat is a British Overseas Territory. The Office of the Director of Public Prosecution falls within the remit of the Governor, as Head of the Public Service

1. The DPP's Office is a unit within the Government of Montserrat, with an integral but critical, unique and specialized role in the overall realization of the Vision and the Strategic Objectives set out in the Government of Montserrat's Sustainable Development Plan.
2. The Office was established with a Director, in September 2011. Prior to the establishment of the Office, all criminal prosecutions were directed by the Attorney General. All serious cases and drug offences were handled by legal staff which comprised the Criminal Division, along with the provision of legal advice and guidance in respect of investigations. Minor criminal cases were prosecuted by police prosecutors. The overriding rationale for this division was the limited number of Counsel available to handle the full caseload on the court list and the nature of the summary matters (minor cases) which was such that they could be competently handled by the Police.
3. On establishment of the office of the DPP, separate and apart from the Montserrat constitutional reforms, the only change effected to the establishment was the removal of the post of Principal Crown Counsel and institution of the post of Director. The other positions of Senior Crown Counsel and Crown Counsel were unchanged. As of August 1, 2012 a recent graduate of the Norman Manley Law School was identified for the post of Crown Counsel and is currently in post, undergoing training.
4. The present challenges faced by the Office require that extra legal staff capacity be provided. Firstly, as of October 1, 2012 the case-load formerly handled by the police was handed over to the legal staff at the ODPP; though help is provided by the police in emergency cases. Between October 2012 and January 31, 2013, temporary assistance, was provided by a police officer who was assigned to assist with the prosecution of summary matters.

5. As the ODPP does not possess sufficient staff to handle these additional duties, an additional legal officer is essential. The acquisition of an additional officer, will increase the complement of available counsel from 3 to 4 including the DPP.

6. The workload is such that the Office handles in excess of 100 cases on average annually in the Magistrates Court, about 35 -40 in the High Court and about 15 on appeal. In addition, there are another 60 on average annually that were handled exclusively by the police. The ODPP was assisted by the Police prosecutors with 38 matters (18 which are summary and 20 traffic) of total cases before the Magistrate's Court in October, 2012.

7. Within Montserrat, there is an increase in crime, even though the level in Montserrat is low in comparison with other countries in the region. Certain crimes involving the use of guns are of concern as they signal the existence of weapons, the possession of which is restricted. With the increase in crime and the need to combat transnational crime through direct initiatives as regards money laundering and drug trafficking and confiscations of proceeds of crime, the burden placed on the Office has significantly increased.

8. In addition, the ODPP needs to devote considerable time to advising the police on the investigation of particular cases and the formulation of legal practices and procedures that aid the police in adopting a pragmatic and consistent approach to developing money laundering cases and the tracing of assets. The Office cannot address this concern effectively with the staff at its present level.

9. The need for this is painfully obvious from the very limited to nonexistent amount of cases dealing with money laundering and confiscation of assets, in comparison to the larger amount of cases of convictions for drug offences and fraud. The very low amount of activity was noted in the report of the CFATF in their evaluation of Montserrat which was conducted in 2010.

10. It is worthwhile to note that the legislative framework for the prosecution of criminal cases stipulates that all matters must be commenced in the Magistrate's court. Offences such as breaches of the Road Traffic Act, money laundering, theft, rape, abduction, fraud, assault, wounding with intent and handling stolen goods are handled in the Magistrates Court, whether by way of summary trial or preliminary Enquiry, as specifically provided by the Penal Code. Matters that are heard in the High Court are those Criminal matters which are committed by the Magistrate for trial in the High Court. In turn appeals against conviction and /or sentence in either the High Court or the Magistrates Court are heard by the Court of Appeal.

Purpose of Assignment

11. It is clear from the core functions that Prosecuting Counsel are expected to do far more than provide representation in court ; they are in fact required to deliver advice on a wide range of matters separate and apart from investigations, as well as participate in the ODPP's delivery of training to the RMPS and other agencies. Additional duties for the new post will concentrate on the following:

- (i) support the DPP to deliver office targets including timely processing of criminal proceedings
- (ii) (ii) conduct criminal proceedings in accordance with established principles,
- (iii) take particular responsibility for criminal proceedings in the areas of money laundering/proceeds of crime/asset recovery,
- (iv) mentor/train junior counsel to fulfil their role,
- (v) contribute to the ongoing strengthening of the Montserrat criminal justice system.

12. Another consideration is that Counsel must continually undergo legal education so as to hone and refine their skills and keep up with prevailing legal principles, in order to be effective. This requires that Counsel be given time between court appearances to conduct research in order to not only handle issues (legal and otherwise) that arise in respect of specific cases, but also to gain a working knowledge of the prevailing legal principles and practical procedures. The staff complement does not allow for Counsel to be able to access training at an optimal level while enabling the ODPP to provide representation in court and legal guidance to investigators.

Qualifications, Skills and Experience

13. The officer will be a Barrister or Solicitor of no less than 5 years practice experience in the prosecution of Criminal offences. The appointee will have a working knowledge of the Proceeds of Crime Act with a minimum of two (2) year's experience, should possess at minimum an LLB or its equivalent and should be entitled to practise in any Commonwealth Jurisdiction.

Scope of Work

14. The Officer will be required to perform the following duties:

- a) Prosecution of all serious Criminal cases whether in the Magistrates' Court for summary offences or committal proceedings, and trials in the Criminal Division of the High Court (e.g. homicides and other offences against the person, rape and other sexual offences, financial crimes, money laundering offences, criminal forfeiture, illegal drug possession or importation, trafficking in persons, migrant smuggling, illegal firearms, offences relating to property and dishonesty, forgery, criminal conspiracy). Represent the Crown whether alone or along with the DPP or other Crown Counsel as required in Criminal Appeals at the Court of Appeal.
- b) Advise the Police and other law enforcement agencies, including but not limited to Her Majesty's Customs and Excise and Revenue Services in their investigation of cases and on all criminal matters. This includes advice in relation to:
- What criminal charges are appropriate based on the material available;
 - Whether there is sufficient cogent material to support a charge;
 - The admissibility of evidence;
 - The current state of the law;
 - Whether a case should be tried summarily or on indictment;
 - The disclosure of material relevant to the case;
 - Legal Submissions with case authorities; □ Additional areas of investigation; □ Securing exhibits.
- c) Provide direction, guidance and advice to the prosecutors in their handling of summary cases. .
- d) In the case of a Crown Counsel, provide ongoing mentoring from the Director of Public Prosecution and the Senior Crown Counsel.
- e) Provide opinions and advice to other government agencies or departments on matters which have implications for the criminal law.
- f) Represent the Government of Montserrat/Office of the DPP at conferences, workshops, seminars whether locally or abroad on matters relating to or touching on and concerning prosecution.
- g) Follow all guidance and directions issued by the DPP to ensure that decisions in all cases are appropriate and correct.
- h) Train Crown Counsel in the prosecution of offences such as Money Laundering Frauds, white collar Crime and Drug offences.

Duration

15. The duration of the assignment will be for a period of two years.

Reporting and Management Arrangements

16. The Officer shall be subject to the statutory rules, orders, general orders, financial instructions, rules and any and all other laws, regulations and practices applicable to members of the Montserrat Public Service for the duration of this Agreement. The officer shall report to the Director of Public Prosecutions or any other officer acting in that capacity from time to time.

17. The Officer should have good interpersonal skills, tact and diplomacy and must be able to work as part of a team or on his/her own initiative. This includes being able to establish good working relationships with other agencies including the private sector.

Key Outputs/Deliverables

18. It is expected that at the end of the second year of assignment, Junior Counsel (Crown Counsel would have been trained to a standard that he/she would be able to adequately take cases in all courts on their own.

19. Significant increases in the rate of prosecution and disposal of criminal matters in the Magistrates Court.

20. Provision of practical guidance to investigators dealing with money laundering and confiscation proceedings.