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Director

Mr Alastair Ross MLA
Chairman
Committee for Justice
Northern Ireland Assembly
Room 242
Parliament Buildings
Stormont
BT4 3XX

10 February 2015

Dear Mr Ross

Re: Rights of audience.

I am prompted to write to you to clarify some issues around the matter of additional rights of audience for selected employed lawyers, which was discussed with the Attorney General at the meeting of the committee on Wednesday last. The Attorney, quite understandably, seeks a facility to permit him to bestow full rights of audience upon certain employed lawyers from within his staff. He makes the point that employed barristers are currently prevented by their professional body from appearing in the Court of Appeal where many of his cases are heard and that additional lawyers must be therefore engaged at a further cost to the public purse and, arguably, against the public interest. He has also stated that, in a small office, he can personally vouch for the quality of his lawyers which may not be the case in the much larger set up of the PPS.

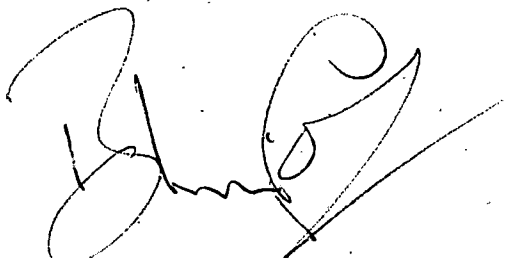
As alluded to by the Deputy Chairman, Mr McCartney, I have only sought a similar facility for a very small number of lawyers in my office (3 in total), who hold the position of Higher Court Advocate. These are senior lawyers who present trials on indictment for the PPS on a daily basis and have been doing so for some two years now. They were appointed to this role following a rigorous selection procedure with an independent lawyer on the panel. They are monitored regularly by senior management and very positive feedback on their performance as advocates has been received from both the public and the bench. Unfortunately, due to the restrictions imposed to their right of audience by their professional body, these advocates cannot appear in the Court of Appeal in the

very same cases they have presented in the Crown Court. This requires the PPS to instruct an entirely new advocate from the self-employed Bar at extra cost. The knowledge these lawyers have built up of the case is therefore lost and there is a risk that the confidence of the victims may be adversely affected by the change in lawyer. Quite apart from these issues, the PPS is keen to attract the very best lawyers from the ranks of the self-employed Bar and such restrictions are not conducive to attracting those lawyers who wish to pursue advocacy at the highest level. For example, in order for a junior counsel to reach advancement to the ranks of Queen's Counsel, it would be expected that at least part of their experience would include work in the Court of Appeal. I would argue that this facility is currently denied to employment lawyers. It is therefore very much in the public interest that any special provision made in respect of increased rights of audience is extended to the PPS.

I would also like to take the opportunity to address a point made by Mr Alban McGuinness MLA on the matter of independence of decision making. There is nothing wrong in principle with directing lawyers also presenting cases, which they have decided to prosecute. We have 100 public prosecutors who carry out both functions in Magistrate's Courts on a daily basis throughout the jurisdiction, without any suggestion ever having been made that our independence has been affected. In any event, the only body with statutory responsibility to determine whether a case is taken or continued is the PPS and while the opinion of an outside advocate instructed to take a case may be considered it is for the PPS and the PPS alone to take the directing decision. As it happens, the primary function of HCA lawyers is to appear in cases directed upon by other lawyers in the office and they are free to express any concerns they may have about the viability of any case in which they are instructed. This should meet any concerns Mr McGuinness may have.

This may represent the only opportunity for the PPS to address this important issue for some time. If the committee considers it helpful, I would be only too happy to attend and address any outstanding concerns any members of the committee may have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barra McGrory', with a long horizontal line extending to the right from the end of the signature.

Barra McGrory QC
Director of Public Prosecutions