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## “Victim’s Rights v. Prosecutor’s Objectivity?”

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The general theme of this conference is “Conflicts and Tensions”. It is not the time to discuss the “Conflicts and Tensions” that may well develop between this Jurisdiction and Westminster following the SNP victory in Scotland. I am sure there will be plenty of time for such talk later.

Turning to the Topic which is the subject of our first discussion today:

“Victim’s Rights versus Prosecutor’s Objectivity?”

Our three substantive speakers on this topic are three criminal specialists and that immediately distinguishes them from the person chairing this session who last appeared in a criminal cause or matter in 1993 in a Diplock trial heard by Mr Justice Shiel as he then was.

They are:

- Honourable Mrs Justice Maura McGowan.

Called to Bar in 1980.  
Appointed a Recorder in 1996.  
Silk 2001.  
Deputy High Court Judge 2010.  
Chair of Bar Council of E+W 2013.  
Appointed to High Court Bench QBD 2014.

- Patrick McGrath Senior Counsel.

Called to Bar 1985.  
Silk in 2011.  
Specialising in Criminal and Administrative Law.

- Brian McConaghie QC.

Called to Bar in 1994.  
Silk in 2005.  
Principal Advocate Depute 2006.  
Prior to hearing from the first of our substantive expert speakers, I feel compelled to make the following observations which I hope will not betray the full extent of my lack of expertise in this topic.

When I first read the title of this topic, I immediately queried the use of the word victim. I wondered whether the use of that unqualified word meant that the discussion this morning would concentrate on that part of the trial process following conviction. If the discussion is to include that part of the trial process prior to a verdict then does the presumption of innocence not

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require some qualification such as alleged victim’s rights? It might be regarded by some as the adoption of a rather pedantic approach. But from my inexpert perspective, I would argue that the presumption of innocence should receive adequate and unambiguous expression even in the title of topics to be discussed.

On further consideration of the question posed, I must say I felt some surprise at the suggestion that there might be any conflict or tension between the alleged victim’s rights and the prosecutor’s objectivity.

The prosecutor has a duty to be objective. There is nothing controversial in that statement, I hope.

In *R v. Anthony West*, a Northern Ireland Court of Appeal decision handed down on 13<sup>th</sup> November, 2009, Girvan LJ referred to the earlier case of *R v Gonez* and stated:

“The court in *R v. Gonez* [1999] All ER (D) 674 succinctly set out the proper approaches to be adopted by prosecuting counsel thus:-

*“Counsel’s submission, which we accept, is that it is the role of prosecuting counsel throughout a trial as indeed before it to act as a minister of justice. It is incumbent upon him or her not to be betrayed by personal feelings in relation to the prosecution. It is incumbent on counsel prosecuting not to seek to excite the emotions of a jury. It is for prosecuting counsel not to inflame the minds of a jury . . . A final speech should as a matter of form, as it seems to us, be a calm exposition of the relevant evidence, so far as it is relevant to give such an exposition and an equally calm invitation to draw appropriate inferences from that evidence.”*

This requirement to be objective is simply part of the over-arching duty of the prosecutor to ensure to the best of his or her ability that the trial process is fair.

If one then considers what is meant by the rights of the alleged victim; surely the principal right of the alleged victim during the criminal process is to be treated fairly during each stage of that process.

If the prosecutor has a responsibility to promote to the best of his or her ability the fairness of the trial process and the alleged victim has the right to be treated fairly during each stage of that process, how could there possibly

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be any conflict or tension between the duties of one and the rights of the other? Or am I being too naive and simplistic and laying bare the full extent of my lack of expertise in this field?

I will now hand over to our three speakers who will no doubt greatly add to my level of insight into these issues and hopefully yours.