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PRIVATE CRIMINAL PROSECUTIONS

What happens if a person reports a criminal offence to the Police, the Police investigate the complaint, and in the end decide not to charge the “offender”? And this happens when the complainant is absolutely convinced of the “offenders” guilt?

Theoretically the complainant has three choices, he or she can:

1. Seek a judicial review of the decision requiring an application in the High Court which is very expensive and ultimately brings a high risk of failure given the fact that the Court would only overturn the decision if it was one no reasonable prosecuting authority would make.
2. Sue the “offender” in the civil jurisdiction of the Court for a personal wrong under the Common Law system of Tort. This is only available where the offending has a personal nature to it for instance, assault. It would not be available if the offending was against a Third Party. Again expensive and time consuming with no guarantee of success in the end. Costs become relevant in the civil court if you lose. Also the question of penalty becomes problematic. A Civil court cannot impose a fine or imprisonment for example.
3. Take a private prosecution against the “offender” in the criminal jurisdiction of the Court.

So in reality the complainant only has the option of taking a private criminal prosecution. That was the situation facing the Wallace family after Steven Wallace was fatally shot by a Police Officer in Waitara in April 2000. Following two Police

investigations, one a full homicide investigation, the other a Police Complaints Authority investigation, and having sought advice from the Crown Solicitor’s office, the Police decided not to prosecute the Officer. The Wallace family then instructed John Rowan Q.C. and initiated a private criminal prosecution for murder resulting in an acquittal some 30 months later.

Whatever one thinks of the strengths or otherwise of the Wallace family case it is a vivid example of a complainant who would not take the Police decision lying down and who (at least to some people) did the Police job for them.

Private criminal prosecutions in New Zealand are rare. For a start they require a complainant with the strength of his or her convictions and normally a refusal by the Police to prosecute. Of course the Police don’t have to be involved, a private person can prosecute an “offender” without having involved the Police at all.

Before bringing a prosecution the complainant needs to be make sure the case is fully investigated. This may mean instructing a Private Investigator. The file and evidence should then be reviewed by an independent person, most appropriately the lawyer the complainant will instruct to prosecute the case. Private prosecutions taken by complainants acting for themselves bring risks of non compliance with Court procedures and rules and ultimately failure and a costs award. Costs can be ordered against an unsuccessful prosecutor under the costs in Criminal Cases Act, however they are not awarded just because the accused is finally acquitted, there must be more justification than just losing.

If anyone has any queries about private criminal prosecutions even if it may be on an academic basis please don’t hesitate to give us a call.