

The Yearly Review of the Prosecutions Division 2004

**A Review by
The Director of Public Prosecutions
for
The Secretary for Justice**

**A Statement by Mr. Grenville Cross SC, JP
on
14 April 2005**

Introduction

The year 2004 saw steady progress by the Prosecutions Division in all key areas of responsibility. Guided by the vision of its *Strategic Plan 2002-2007*, the Division moved forward with resolve and a sense of mission. Reforms were pursued and enhanced standards of performance sought. The themes of professionalism, modernisation and transparency were stressed throughout the year. Much was done to advance the rule of law.

The Strategic Plan 2002-2007

The *Strategic Plan of the Prosecutions Division 2002-2007* was introduced in 2002. In its second full year of operation, the *Strategic Plan* lent cohesion to our commitment to provide a clear vision and a specific agenda to guide prosecutors at a critical time. It placed the notion of service to the public at the centre of prosecutorial thought and action. That was achieved in 2004 through more effective prosecutions, promotion of public confidence, development of professionalism, strengthening of liaison with our criminal justice partners and a policy of transparency to enhance community understanding of public prosecutions. Through the implementation of the *Strategic Plan*, we developed :

- latest techniques in case preparation
- closer liaison with law enforcers
- professional conduct of trials
- efficient case management
- dedicated combat of organized crime

- high standards of appellate advocacy
- effective prosecution of commercial crime
- determined pursuit of criminal assets
- latest techniques to counter technology crime and copyright piracy
- vigorous enforcement of anti-corruption laws.

Public Prosecutions in 2004

Article 63 of the Basic Law provides that the Department of Justice shall control prosecutions, free from any interference. Throughout 2004, prosecutors took the decisions they believed to be right, without fear or favour. Decisions on cases were based on evidence and taken in light of what was just. People were only charged with offences once we were satisfied that there was sufficient evidence. A bare chance of conviction fell short of the required standard.

Throughout the year, a policy of transparency was pursued. To the extent that this was compatible with the interests of suspects and victims, the basis for prosecution decisions was explained and rationalised. This reflected our belief that if we were open and accountable to the public about the way we operated, we would promote confidence and respect for the difficult decisions we had to make of whether or not to prosecute those suspected of crime.

In 2004, prosecutors pursued **232,081** prosecutions, and gave **16,034** legal advices. Strict legal criteria were applied in the decision-making process. This meant that there had at least to be a reasonable prospect of securing a conviction before suspects were charged. We acted at all times in accordance with our assessment of what the interests of justice required. An independent judgment was applied to the question of whether or not to prosecute, and just as no-one was treated as being above the law, so, also, and just as importantly, no-one was treated as being beneath the law.

Criminal Justice Initiatives in 2004

In 2004, the Division continued to improve the quality of criminal justice by identifying those areas where criminal law and procedure required revision, and then made the case for change. Proposals to enhance the legal system and the service provided to the public were formulated and advanced. We were active in pursuit of a better criminal justice system.

Specific measures were advanced by the Division to facilitate the avoidance of miscarriages of justice. These included :

- guidelines on the use of prisoner informants
- reshaping attitudes, practices and culture amongst frontline enforcement personnel to avoid impropriety or bad practice
- retention of case materials to facilitate reviews of the safety of convictions in light of forensic advances
- improved liaison among different investigative agencies over suspects charged separately by them
- guidance for prosecutors and police regarding the use to be made in the combat of crime of participating informants
- revised arrangements for the disclosure of unused material by the prosecution to the defence.

The Division settled measures to promote the position of crime victims and witnesses. These included :

- new guidelines on the treatment of victims and witnesses
- improved arrangements for victims at court
- allowing prosecutors to interview key witnesses in advance of hearings, subject to safeguards
- wider support to civilian witnesses from witness support officers
- reviewing the powers of the courts to award compensation and restitution
- liaison with our criminal justice partners to avoid the trial of sexual abuse cases in plea courts at the summary level.

Today, in response to concerns over the quality of expert witnesses in criminal cases, we publicly release *The Code of Practice for Expert Witnesses Engaged by the Prosecution Authority*. This *Code* indicates how as prosecutors we expect expert witnesses engaged by the prosecution from the private sector to conduct themselves. Such experts must agree to abide by the *Code* as part of their terms of engagement. The expert is not a hired gun acting at the behest of one or other party, but a professional whose duty it is to contribute to the attainment of justice. The *Code* therefore identifies the standards of practice required of those to whom it applies. The duty of the expert to help the court on

matters within his expertise overrides any obligation to the person from whom he has received instructions or by whom he is paid. The extent to which the expert is required to make disclosure of relevant information is indicated. The *Code* applies to any expert engaged by the prosecution to :

- provide a report and/or witness statement as to his or her opinion for use as evidence in criminal proceedings, or
- give opinion evidence in criminal proceedings, or
- inquire into and report on a question as the court appointed expert.

The *Code* emphasises that the expert witness :

- has an overriding duty to assist the court impartially on matters relevant to his area of expertise
- has a primary duty to the court and not to the person who retains him
- is not an advocate for a party, but a seeker of the truth.

Treatment of Victims and Witnesses

In 2004, the Division implemented new guidelines for victims of crime and witnesses. Special arrangements were put in place to protect the interests of such people. Justice is the expectation of victims and witnesses, and as prosecutors we recognise that it is also their right. The guidelines therefore emphasise :

- the right to witness protection
- the right to information throughout proceedings
- the right to assistance at court
- the right to seek restitution or compensation
- the right to protection from unjust criticism
- the right to have the court informed of the consequences of crime
- the right to seek witness expenses
- the right to information on appeals or reviews
- the right to have property disposed of appropriately once proceedings conclude.

In 2004, our Vulnerable Witness Team (VWT), which advised on cases involving the most vulnerable of witnesses and conducted related prosecutions, was expanded to 18 dedicated prosecutors. This strengthened our capacity to promote the interests of victims and witnesses and also of their relations. The VWT contributed to the Working Group on Combating Violence, the Task Force on Victim Support, the Executive Committee of Against Child Abuse, and the Association Concerning Sexual Violence Against Women. Through the VWT we advanced the *United Nations Guidelines for Action on Children in the Criminal Justice System*, which emphasise the special and protective role of prosecutors in cases involving child victims.

International Association of Prosecutors

Throughout 2004, the Division played a full role in the International Association of Prosecutors (IAP), which it joined in 2001 as an organisational member. We worked with the IAP to develop anti-crime strategies, and assisted its special projects concerned with corruption, child abuse and technology crime.

From 25 to 27 November 2004, we hosted the 2nd Asia and Pacific Regional Conference of the International Association of Prosecutors. The theme was *'Dealing with drug offenders'*. Front-line prosecutors examined the means to combat the trade in narcotics, and the methods by which prosecutors could co-operate more effectively at regional and international levels.

The Regional Conference was attended by prosecutors from 17 jurisdictions. Apart from Hong Kong, these included the Mainland of China, Macao, Chinese Taipei, Australia (New South Wales and Victoria), Brunei, Canada (Alberta and British Columbia), Fiji, Japan, Korea, the Netherlands, Singapore, Thailand, the United Kingdom and the United States of America.

Contacts with the Mainland and Macao

Throughout 2004, the Division strengthened its links with legal officials from other parts of China. Prosecutors visited the Mainland and Macao to discuss legal reform, human rights, the combat of corruption and the prosecution of organized crime. We briefed **13** visiting delegations from the Mainland, and **2** from Macao upon our system of criminal justice.

The Agreement on Legal Services Co-operation between the Department of Justice and the Shanghai Justice Bureau was signed in 2003, and it paved the way in March for the first-ever visit by a delegation of our prosecutors to Shanghai. As a result, significant ties were established, and mutual

understanding was developed. In June, our prosecutors participated in the International Seminar on Criminal Pre-trial Procedure Reforms, organised in Beijing by the China University of Political Science and Law. Ideas were exchanged upon the scope and pace of the reform of the criminal procedure laws of the Mainland. In November, at the Pan-Pearl River Delta Prosecutors-General Conference, in Guangzhou, our prosecutors discussed with regional counterparts how best to combat regional crime. Regional prosecutors shared a common commitment to effective and improved law enforcement in the Pearl River Delta area.

Key Areas of Prosecution Responsibility

The Division's teams of specialist prosecutors discharged a heavy workload in 2004. These included :

- (1) **Commercial Crime** : In 2004, there were **69** serious fraud cases investigated - each such case involved losses of at least **\$5 million** - and **83** persons were prosecuted for serious fraud offences. Reported losses in serious fraud complaints amounted in 2004 to **\$1,485 million**.
- (2) **Corruption** : In 2004, there were **3,746** corruption reports to the ICAC. We prosecuted **494** persons for corruption and related offences, and provided **884** advices to the ICAC. Calculated on the number of cases, we secured convictions in **83%** of corruption cases.
- (3) **Copyright Crime** : In 2004, **707** cases were prosecuted involving criminal violations of the Copyright Ordinance, and **579** persons were imprisoned. Our Copyright Crime Team provided **135** advices to law enforcers.
- (4) **Customs Offences** : In 2004, our prosecutors advised the Customs and Excise Department on offences involving smuggling, licensing breaches, origin frauds and excise duty evasion. We gave **784** advices to Customs and prosecuted **1,419** cases, which resulted in the convictions of **1,057** persons and **101** companies.
- (5) **Immigration Offences** : In 2004, our prosecutors advised the Immigration Department on offences involving false travel documents, making false representations to an immigration officer, possession of a forged identity card, breach of

condition of stay and employing a person not lawfully employable. We gave **307** advices to the Immigration Department, and prosecuted **20,864** persons for immigration law offences.

- (6) **Money Laundering** : In 2004, **40** persons were prosecuted for money laundering offences under the Organized and Serious Crimes Ordinance, and **\$14.8 million** in crime proceeds was confiscated. A further **\$64.8 million** was restrained pending court proceedings.
- (7) **Narcotics** : In 2004, we prosecuted manufacturers, distributors and possessors of dangerous drugs. In total, we prosecuted **474** persons in 2004 in the Court of First Instance and the District Court for the more serious narcotics offences of importing, manufacturing or distributing dangerous drugs. A further **5,577** persons were prosecuted for unlawful possession of dangerous drugs.
- (8) **Obscene Articles and Child Pornography** : In 2004, our prosecutors advised the Television and Entertainment Licensing Authority (TELA) on cases arising under the Control of Obscene and Indecent Articles Ordinance. TELA referred **1,936** articles to the Obscene Articles Tribunal for classification. Of these, **1,344** articles were classified as obscene, and **536** as indecent. These positive classifications resulted in **147** prosecutions.

In 2004, **24** persons were prosecuted under the new Prevention of Child Pornography Ordinance, and **18** were convicted.

- (9) **Technology Crime** : In 2004, there were **560** reported cases of every type of technology crime. We prosecuted **15** cases of technology crime, and **18** persons were convicted. Our Computer Crime Team provided **50** advices to law enforcers.
- (10) **Triad and Organized Crime** : In 2004, we prosecuted **551** persons for triad society offences. Prosecutors made **29** applications for enhanced sentences for those convicted of offences under the Organized and Serious Crimes Ordinance.

Caseload

In 2004, there were **232,081** new prosecutions in the courts, as compared to **210,055** in 2003. In 2004, **16,034** advices were given in criminal cases, as compared to **16,820** advices in 2003.

In 2004, Government Counsel attended **1,276** court days in the Court of First Instance. That compared with **1,399** court days in 2003. In the District Court, the figures for 2004 and 2003, were, respectively, **965** and **1,130** court days. In the Magistrates Courts, the figures for 2004 and 2003 were, respectively, **416** and **824** court days.

Our Court Prosecutors prosecuted a total of **192,163** cases in 2004 in the Magistrates Courts, involving **13,743** court days. That compared with **183,866** cases in 2003, involving **13,851** court days.

Conviction Rates

	<u>2003</u>	<u>2004</u>
Magistrates Court	77.3%	77.3%
District Court	87.5%	90.1%
Court of First Instance	88.6%	89.1%

Appeal Rates

	<u>2003</u>	<u>2004</u>
<u>Court of Appeal</u>		
Total no. of appeals determined	656	692
- Dismissed	228 (34.8%)	254 (36.7%)
- Allowed	106 (16.1%)	115 (16.6%)
- Abandoned	322 (49.1%)	323 (46.7%)

Magistracy Appeals

Total no. of appeals concluded	1,247	1,314
- Dismissed	545 (43.7%)	596 (45.4%)
- Allowed	239 (19.2%)	270 (20.5%)
- Abandoned	463 (37.1%)	448 (34.1%)

Court of Final Appeal (CFA)

The work of the CFA in criminal cases tested our resources in 2004. The number of cases processed and conducted in 1997/2004 far exceeded the number that proceeded to the Privy Council prior to reunification. Thus :

From January 1990 to June 1997, (7½ years), there were **99** criminal cases from Hong Kong to the Privy Council.

In comparison :

Between July 1997 and December 2004 (7½ years), **568** CFA and CFA-related criminal cases were dealt with – an increase of **473.7%**.

Briefing Out Cases

In 2004, a substantial number of cases was briefed out to private lawyers to prosecute on our behalf. This is an arrangement which is of assistance to the Division, and enables us to contribute to the development of a legal profession which is experienced and balanced in its understanding of public prosecutions. The briefing out statistics were :

- (1) Court of First Instance : **27** cases were briefed out, accounting for **608** court days. This may be compared with **450** cases prosecuted by Government Counsel, and accounting for **1,276** court days. The percentage of cases briefed out to private lawyers was **5.7%**, and **32.3%** of court days;
- (2) District Court : **527** cases were briefed out, accounting for **1,958** court days. This may be compared with **1,046** cases prosecuted by Government Counsel, and accounting for **965** court days. The percentage of cases briefed out to private lawyers was **33.5%**, and **67.0%** of court days;
- (3) Magistrates Court : **286** cases were briefed out, accounting for **860** court days. This may be compared with **301** cases prosecuted by Government Counsel, and accounting for **416** court days. The percentage of cases briefed out to private lawyers was **48.7%**, and **67.4%** of court days.

OVERALL PERCENTAGE OF BRIEFING OUT : **31.9%** of cases and **56.3%** of court days. [Compared to **26.8%** of cases, and **49.3%** of court days, in 2003.]

Court Prosecutors

In 2004, the Court Prosecutors ensured that the public received the highest levels of criminal justice in the magistracies. They prosecuted most of the cases to be tried in the courts of Hong Kong, and contributed decisively to the smooth administration of the magistracies. In all they did they acted with professionalism, determination and skill. I take this opportunity to thank the Court Prosecutors for their impressive contribution to the legal system of Hong Kong.

Of the **104** Court Prosecutors in practice in 2004, **45** held legal qualifications. Whereas **8** were admitted as barristers, a further **10** had obtained their Postgraduate Certificates in Law (PCLL). A further **27** had law degrees, while **39** others were holders of degrees in other disciplines. At the end of 2004, **11** Court Prosecutors were studying for legal degrees.

The average cost per court day of prosecutions conducted by a Court Prosecutor of **\$2,622** compares favourably with the fees for counsel prosecuting on general fiat of **\$5,430** per court day. If all the **13,743** court days conducted by Court Prosecutors in 2004 were to be briefed out to private counsel, it would cost about **\$74.6 million**, which is **107.1%**, or **\$38.6 million**, more than the **\$36 million** cost of the Court Prosecutors. The system of Court Prosecutors is one which not only works, but is one that delivers justice to the community at a reasonable cost.

Chinese Language Programme

Throughout 2004, we promoted the use of the Chinese language in criminal proceedings. Of our **111** Government Counsel, **90** were bilingual in 2004, while all **104** of our Court Prosecutors were proficient in Chinese and English. We sent prosecutors to Zhongshan University for specialist training to develop their capacity to make legal submissions to courts in Chinese. We organised **6** Chinese language workshops to develop the capacity of bilingual prosecutors to conduct cases in Chinese. The *Glossary of Legal Terms for Criminal Proceedings*, which was introduced in 1998, now contains **1,500** terms. Our Bilingual Court Documents Unit translated **7,066** English documents into Chinese, and **136** Chinese documents into English. The figures for the use of Chinese language in criminal proceedings in 2004 show :

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Court of Appeal	23.0%	24.6%	22.7%
Court of First Instance (Magistracy Appeals)	55.9%	59.9%	56.8%
Court of First Instance (Trials)	27.1%	23.7%	21.2%
District Court	30.0%	32.5%	12.3%
Magistrates Court	77.5%	74.9%	68.7%

Conclusion

Prosecutors everywhere face formidable challenges. Organized crime is a global security threat. Patterns of criminality have proliferated. Criminals are more sophisticated and better financed than ever before. Laws are sometimes inadequate, and loopholes are exploited.

If prosecution services are to operate to best advantage, they must possess the manpower and the resources. Those who prosecute require every assistance if they are to combat crime and protect the public. Firm laws have to be supported by realistic penalties. In the discharge of their duties, prosecutors must be creative in thought and resolute in action.

Liaison amongst prosecutors is imperative. They cannot operate in a vacuum. International initiatives to counter crime deserve full support. Experiences should be shared and ideas pooled. Common agendas have to be pursued at the global level. Profits must be taken out of organized crime.

The prosecutor is the linchpin of the criminal justice system. Independent and fearless, the prosecutor applies the principles of his profession and defends the integrity of his position. Dedication and professionalism are the essence of his calling, together with the relentless prosecution of crime. A principled approach to public prosecutions is fundamental to his position.

Throughout 2004, the Division was encouraged in all it did by the Secretary for Justice, Ms. Elsie Leung. She endorsed our vision of a just, advanced and transparent prosecution service, which conformed to international norms. We thank the Secretary for her support and guidance.

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