

The Yearly Review of the Prosecutions Division 2005

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

**A Statement by Mr. Grenville Cross SC, JP
on
6 April 2006**

Introduction

The year 2005 was a significant one for the Prosecutions Division. Throughout 2005, the means to combat crime more effectively were subject to ongoing review. Measures were adopted to modernise our operations, and to avoid the possibility of miscarriages of justice. Our policy of transparency promoted public understanding of our work, and helped to secure our position. A positive role was played in the development of criminal justice through our own initiatives and by constructive liaison with others.

The Strategic Plan 2002-2007

The *Strategic Plan of the Prosecutions Division 2002-2007* was introduced in 2002. Throughout its three years of operation, it has ensured that in all they do prosecutors apply modern thinking, deploy latest techniques and achieve professionalism. The *Strategic Plan* recognises the importance of international co-operation in the combat of crime. Through the application of the *Strategic Plan*, prosecutors committed themselves in 2005 to :

- working with the International Association of Prosecutors
- liaising with the Asia Crime Prevention Foundation
- assisting global initiatives to enhance criminal justice
- promoting contacts, exchanging ideas and sharing experiences
- providing speakers, panellists and facilitators at the international level.

Public Prosecutions in 2005

Article 63 of the Basic Law provides that the Department of Justice shall control prosecutions, free from any interference. The duty of the prosecutor is to take the decisions he believes to be right, regardless of criticism, actual or potential. Throughout 2005, the Division operated within the parameters of its published prosecution guidelines, and determined where the interests of justice lay in each case. Where possible, prosecution was used as an instrument of last resort. Alternatives to prosecution were pursued where appropriate.

Prosecution policy was applied in a manner which was fair, open and just. In all they did, prosecutors represented the public interest. Through its policy of transparency, the Division reached out in 2005 to the community it served, and sought its trust. Prosecutors recognised that their position had to be grounded in public confidence, and that decisions must be justifiable. Equality of treatment lay at the heart of prosecution policy.

In 2005, prosecutors pursued **222,876** prosecutions, and gave **14,707** legal advices. Allegations of criminal misconduct were scrupulously examined by prosecutors, who recognised that no suspect should be prosecuted unless there was at least a reasonable prospect of conviction. Mere suspicion fell well short of the required standard. Whenever their position was challenged, prosecutors stood firmly by the decisions they believed to be right.

Criminal Justice Initiatives in 2005

In 2005, the Prosecutions Division continued to develop the quality of criminal justice available to the community. In order to reshape attitudes, practice and culture amongst the law enforcement agencies in the interests of enhanced criminal justice, prosecutors conducted seminars for frontline enforcement personnel. These were designed to heighten awareness of potential problems in the course of investigation, to enhance standards of case preparation and to reduce the scope for impropriety. Specific initiatives to have been examined by prosecutors included :

- improved procedures for the disclosure of unused material
- better arrangements for the handling of informers
- revised sentencing guidelines for serious offences
- preservation of the anonymity of blackmail victims

- greater consistency in the approach to the charging of aged suspects
- enhanced priority for vulnerable witnesses cases
- guidance on the use of search warrants on law premises
- improved co-ordination over suspects charged separately by different agencies.

Prosecutors and police also reached consensus over the retention of case exhibits for at least twenty years after convicted cases conclude. This will facilitate reviews of the safety of convictions in light of advances in forensic science. On the advice of prosecutors, police will keep exhibits in serious criminal cases, such as homicide and rape, for at least twenty years.

Standing Committee on Disclosure

Every accused has the right to a fair trial. This requires the prosecution to observe its disclosure obligations. The general duty of the prosecution is to disclose to the defence the evidence it proposes to rely upon at trial. Also disclosable is relevant material which might undermine the prosecution case or advance the defence case. The issue of the ambit of the duty of disclosure has proved problematic for prosecutors in Hong Kong, as well as elsewhere.

The Standing Committee on Disclosure was established by the Prosecutions Division in 2004. Its mandate is to keep the disclosure arrangements of the Division under periodic review. In 2005, the Standing Committee advised the Division on :

- treatment of intercepted material
- use of special advocates
- material possessed by third parties
- crime and legal professional privilege
- public interest immunity
- review of disclosure arrangements used by the police, the ICAC and the Customs and Excise Department
- specially-tailored guidelines on disclosure for prosecuting departments
- increased emphasis on disclosure requirements in training courses.

Throughout 2005, the Standing Committee ensured that the Division's disclosure procedures remained modern and just, and attuned to international norms.

International Association of Prosecutors

Throughout 2005, the Prosecutions Division played a full part in the affairs of the International Association of Prosecutors (IAP), which it joined in 2001 as an organisational member. The IAP promotes the effective, fair and impartial prosecution of criminal offences, and encourages liaison amongst world prosecutors. In 2005, we co-operated closely with the IAP in order to enhance our capacity to counter transnational crime.

In August 2005, the Prosecutions Division was awarded the Certificate of Merit of the IAP, to recognise its contribution to the work and initiatives of the IAP. This was a welcome recognition of the status now enjoyed by the Division at the international level. It emphasised our position as a world-class prosecuting authority.

We are also pleased to announce today that following a bid submitted in early 2005, the Division has been selected to host the 12th Annual Conference and General Meeting of the International Association of Prosecutors in 2007. This is a great honour for all of our prosecutors, and we have accepted the selection. In consequence, the Annual Conference of the IAP will be held in Hong Kong at the Hong Kong Convention and Exhibition Centre from 16 to 20 September 2007. It will be attended by 500 prosecutors from over 120 countries, representing every region of the world.

Contacts with the Mainland and Macao

Throughout 2005, the Division pursued its policy of constructive engagement with prosecutors and legal officials in other parts of China. In exchanges with the counterparts from the Mainland and Macao, prosecutors discussed the combat of corruption, banking and commercial crime, forensic examination systems, sentencing of offenders, technology crime, trial by jury, human rights and the reform of criminal justice. We briefed 11 visiting delegations from elsewhere in China upon the operation of our legal system. In turn, our prosecutors visited justice officials in Qingdao and Shanghai under the Legal Services Co-operation Agreements.

In 2005, the prosecution services of the Mainland, Hong Kong and Macao supported one another in international fora. These included the China-ASEAN Prosecutors General Conference, in Bangkok, the Asia-Europe Prosecutors General Conference, in Shenzhen, and the Annual Conference of the International Association of Prosecutors, in Copenhagen. When the Division launched its bid to host the Annual Conference and General Meeting of the IAP in Hong Kong, in 2007, it was supported by its sister services from elsewhere in China. Such co-operation reflected the levels of understanding at the practical level which now exist amongst the prosecutors of China.

Key Areas of Prosecution Responsibility

The Prosecutions Division's teams of specialist prosecutors confronted various crimes in 2005. These included :

- (1) **Commercial Crime** : In 2005, there were **63** serious fraud cases investigated - each such case involved losses of at least **\$5 million** - and **18** persons were prosecuted for serious fraud offences. Reported losses in serious fraud complaints amounted in 2005 to **\$3.29 billion**.
- (2) **Copyright Crime** : In 2005, **694** cases were prosecuted involving criminal violations of the Copyright Ordinance, and **522** persons were imprisoned. Our Copyright Crime Team provided **157** advices to law enforcers.
- (3) **Corruption** : In 2005, there were **3,685** corruption reports to the ICAC. We prosecuted **356** persons for corruption and related offences, and provided **714** advices to the ICAC. Calculated on the number of cases, we secured convictions in **81%** of corruption cases.
- (4) **Customs Offences** : In 2005, our prosecutors advised the Customs and Excise Department on offences involving smuggling, licensing breaches, origin frauds and excise duty evasion. We gave **765** advices to Customs and prosecuted **1,246** smuggling cases, which resulted in the convictions of **895** persons and **360** companies.
- (5) **Environmental Protection** : In 2005, our prosecutors advised the Environmental Protection Department on offences involving pollution, noise, waste disposal, dumping at sea and

the ozone layer. We prosecuted **297** cases involving violations of environmental laws. Fines imposed upon offenders by the courts totalled **\$2,698,900**.

- (6) **Immigration Offences** : In 2005, our prosecutors advised the Immigration Department on offences involving false travel documents, making false representations to immigration personnel, possession of forged travel documents, breach of condition of stay and employment of persons not lawfully employable. We gave **265** advices to the Immigration Department, and prosecuted **18,369** persons for immigration law offences, resulting in **18,214** persons convicted.
- (7) **Labour and Occupational Safety** : In 2005, our prosecutors advised the Labour Department on offences involving occupational safety, non-payment of wages, anti-union activity and denial of workers' rights. The Labour Team gave **415** advices to the Labour Department, and prosecuted **4,695** labour cases, resulting in **4,466** convictions.
- (8) **Money Laundering** : In 2005, **57** persons were prosecuted for money laundering offences under the Organized and Serious Crimes Ordinance, and **\$18.11 million** of crime proceeds was confiscated. A further **\$276.11 million** was restrained pending court proceedings.
- (9) **Narcotics** : In 2005, we prosecuted manufacturers, distributors and possessors of dangerous drugs. In total, we prosecuted **518** persons 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 **3,621** persons were prosecuted for unlawful possession of dangerous drugs.
- (10) **Obscene Articles and Child Pornography** : In 2005, our prosecutors advised the Television and Entertainment Licensing Authority (TELA) on cases arising under the Control of Obscene and Indecent Articles Ordinance. TELA referred **746** articles to the Obscene Articles Tribunal for classification. Of these, **511** articles were classified as obscene, and **180** as indecent. These positive classifications resulted in **206** prosecutions.

- (11) **Technology Crime** : In 2005, there were **667** reported cases of technology crime. We prosecuted **17** cases of technology crime, and **15** persons were convicted. Our Computer Crime Team provided **41** advices to law enforcers.
- (12) **Triad and Organized Crime** : In 2005, we prosecuted **560** persons for triad society offences. Prosecutors made **19** applications for enhanced sentences for those convicted of offences under the Organized and Serious Crimes Ordinance.

Caseload

In 2005, there were **222,876** new prosecutions in the courts, as compared to **232,081** in 2004. In 2005, **14,707** advices were given in criminal cases, as compared to **16,034** advices in 2004.

In 2005, Government Counsel attended **1,700** court days in the Court of First Instance. That compared with **1,276** court days in 2004. In the District Court, the figures for 2005 and 2004, were, respectively, **866** and **965** court days. In the Magistrates Court, the figures for 2005 and 2004 were, respectively, **591** and **416** court days.

Our Court Prosecutors prosecuted a total of **188,306** cases in 2005 in the Magistrates Courts, involving **13,704.5** court days. That compared with **192,163** cases in 2004, involving **13,743** court days.

Conviction Rates

	<u>2004</u>	<u>2005</u>
Magistrates Court	77.3%	73.5%
District Court	90.1%	87.5%
Court of First Instance	89.1%	90.4%

Appeal Rates

	<u>2004</u>	<u>2005</u>
<u>Court of Appeal</u>		
Total no. of appeals determined	692	601
- Dismissed	254 (36.7%)	241 (40.1%)
- Allowed	115 (16.6%)	111 (18.5%)
- Abandoned	323 (46.7%)	249 (41.4%)

Magistracy Appeals

Total no. of appeals concluded	1,314	1,154
- Dismissed	596 (45.4%)	579 (50.2%)
- Allowed	270 (20.5%)	200 (17.3%)
- Abandoned	448 (34.1%)	375 (32.5%)

Court of Final Appeal (CFA)

The effective conduct of criminal cases in the CFA remained a priority in 2005. The number of cases processed and conducted in 1997/2005 far exceeded the number that proceeded to the Privy Council prior to reunification. Thus :

From January 1989 to June 1997, (8½ years), there were **106** criminal cases from Hong Kong to the Privy Council.

In comparison :

Between July 1997 and December 2005 (8½ years), **708** CFA and CFA-related criminal cases were dealt with – an increase of **567.9%**.

Briefing Out Cases

In 2005, numerous cases were briefed out to private lawyers to prosecute on our behalf. This is an arrangement which facilitates the operation of the Division, and contributes 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 : **32** cases were briefed out, accounting for **458** court days. This may be compared with **434** cases prosecuted by Government Counsel, and accounting for **1,700** court days. The percentage of cases briefed out to private lawyers was **6.9%**, and **21.2%** of court days;
- (2) District Court : **595** cases were briefed out, accounting for **2,725** court days. This may be compared with **964** cases prosecuted by Government Counsel, and accounting for **866** court days. The percentage of cases briefed out to private lawyers was **38.2%**, and **75.9%** of court days;

- (3) Magistrates Court : **298** cases were briefed out, accounting for **698** court days. This may be compared with **320** cases prosecuted by Government Counsel, and accounting for **591** court days. The percentage of cases briefed out to private lawyers was **48.2%**, and **54.2%** of court days.

OVERALL PERCENTAGE OF BRIEFING OUT : **35.0%** of cases and **55.1%** of court days. [Compared to **31.9%** of cases, and **56.3%** of court days, in 2004.]

Court Prosecutors

In 2005, our Court Prosecutors continued to promote high levels of criminal justice in the Magistrates Courts. They conducted the bulk of the cases tried in the courts of Hong Kong, and facilitated the efficient processing of cases at the summary level. In all areas, their contribution was excellent. I pay tribute to this fine corps of men and women for their achievements and for their unswerving dedication to the ends of justice, in what are often challenging circumstances.

Of the **98** Court Prosecutors in practice in 2005, **45** held legal qualifications. Whereas **9** were admitted as barristers, a further **6** had obtained their Postgraduate Certificates in Law (PCLL). A further **30** had law degrees, while **34** others were holders of degrees in other disciplines. At the end of 2005, **4** Court Prosecutors were studying for law degrees.

The average cost per court day of prosecutions conducted by a Court Prosecutor of **\$2,511** compares favourably with the fees for counsel prosecuting on general fiat of **\$5,430** per court day. If all the **13,704.5** court days conducted by Court Prosecutors in 2005 were to be briefed out to private counsel, it would cost about **\$74.4 million**, which is **116.2%**, or **\$40 million**, more than the **\$34.4 million** cost of the Court Prosecutors. Not only do our Court Prosecutors provide a first-class service, they do so at a cost which is reasonable, which is a welcome bonus.

Chinese Language Programme

Throughout 2005, we continued to promote the use of the Chinese language in criminal proceedings. Of our **103** Government Counsel, **86** were bilingual in 2005, while all **98** 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 1 Chinese language workshop 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 1,564 terms. Our Bilingual Court Documents Unit translated 6,882 pages of English documents into Chinese, and 239 Chinese documents into English. The figures for the use of Chinese language in criminal proceedings in 2005 show :

	<u>2003</u>	<u>2004</u>	<u>2005</u>
Court of Appeal	24.6%	22.7%	19.3%
Court of First Instance (Magistracy Appeals)	59.8%	56.8%	62.5%
Court of First Instance (Trials)	23.7%	21.2%	16.5%
District Court	32.5%	12.3%	11.8%
Magistrates Court	74.9%	68.7%	69.7%

Conclusion

Through professionalism and creativity, prosecutors advance the rule of law. They guide investigators, assist the courts and protect the interests of victims and suspects. Operating at the heart of the legal system, the prosecutor is uniquely placed to deliver justice. Fairness is the end, as well as the means.

The globalisation of crime necessitates liaison amongst prosecutors. Through co-operation comes mutual understanding, as well as smoother procedures and the building of trust. Effective techniques to prosecute crime can only develop if prosecutors adequately support one another and co-ordinate their activities. Mutual legal assistance is vital.

In conclusion, I thank the former Secretary for Justice, Ms. Elsie Leung, for the unwavering support which she gave to the Division in all it did not only in 2005, but ever since reunification. She shared our vision of a prosecution service which is modern, transparent and internationalist, and encouraged our initiatives, both locally and at the international level. She was a remarkable Secretary, and a great lady. I equally welcome our new Secretary for Justice, Mr. Wong Yan-lung. I thank him for all of his guidance since his appointment in October 2005. It has become apparent to me in a short time that the Secretary endorses our commitment to professionalism in the conduct of public prosecutions, to effectiveness in the combat of crime and to co-operation with our counterparts in other places in the interests of better law enforcement.

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