

The Yearly Review of the Prosecutions Division 2006

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

**A Statement by Mr. Grenville Cross, SC
on
19 April 2007**

Introduction

For the Prosecutions Division, 2006 was a year of challenge and of change. Throughout the year, prosecution policy was scrupulously applied, modernisation was vigorously pursued, and closer liaison with our counterparts in other places was actively promoted in the interest of better law enforcement. A series of reforms to modernise our processes was introduced, and a policy of transparency was maintained to promote community understanding of our work. Our core business remained the professional and effective prosecution of criminals.

The Strategic Plan of the Prosecutions Division 2002-2007

The *Strategic Plan of the Prosecutions Division 2002-2007* was introduced in 2002. In its fourth full year of operation, prosecutors brought the bulk of the *Strategic Plan* to fruition. Partnerships were strengthened, liaison was improved, professionalism was encouraged, expertise was enhanced and transparency was promoted. The *Strategic Plan* placed the notion of service to the community at the heart of the Division's agenda, and committed prosecutors to '*a professional and focused system of public prosecutions*'. Through the implementation of the *Strategic Plan*, prosecutors committed themselves in 2006 to :

- the fair and independent making of decisions
- the timely and accurate giving of advices
- the firm and fair prosecution of offenders
- the effective and concerted combat of crime

- the modern and efficient operation of the prosecution service.

Prosecution Policy in 2006

Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions, free from any interference. Throughout 2006, prosecutors acted independently of both government and those who investigate, and took the decisions they considered to be in the interests of justice. Before prosecutions were instituted, there had at least to be a reasonable prospect of conviction, and the laying of charges had also to be in the public interest. Suspects were protected from prosecution on the basis of mere suspicion.

In 2006, prosecutors pursued **215,302** prosecutions, and gave **14,895** legal advices. Whenever possible, prosecution action was used as a last resort, and particularly with young persons alternatives to prosecution were considered. As regards juvenile offenders aged up to 17 years, **2,774**, or **40.3%**, were cautioned by the Police as an alternative to prosecution.

Criminal Justice Initiatives in 2006

In 2006, the Division sought to enhance the quality of criminal justice available to the community, and prosecutorial techniques were subject to constant review. Proposals to improve the operation of the legal system were formulated and advanced. Specific initiatives to have been pursued by prosecutors included :

- the compilation of a criminal appeals manual
- the finalisation of procedures for the disclosure of unused material by law enforcement personnel
- the drafting of a manual of specimen charges to promote consistency in offence formulation
- the implementation of measures to fast-track cases involving vulnerable witnesses
- the preparation of guidelines for prosecuting cases involving domestic violence.

Domestic Violence

In October 2005, the Policy Address contained a commitment to protect the victims of domestic violence, and to '*pursue the perpetrators of violence and bring them to justice*'. As prosecutors, we recognise that domestic

violence is a blight on society, and in 2006 we established a working group to modernise our existing arrangements, and to identify measures to promote the interests of its victims. In November, the working group issued to prosecutors *The Policy for Prosecuting Cases involving Domestic Violence*. *The Policy* places the robust prosecution of domestic violence cases at the forefront of our planning. *The Policy* recognises that justice is the right of those who are abused in a domestic context.

The Policy guides prosecutors in their dealings with others, and promotes an appreciation of the standards of service that victims of domestic violence are entitled to expect of the criminal justice system. If offenders are to be brought to justice, victims must trust the system and be prepared to testify against them at court. *The Policy* is a practical guide for prosecutors, and it places victims and their interests at the heart of the approach to prosecuting. *The Policy* :

- describes domestic violence
- explains the prosecution's role
- considers charging policy and practice
- highlights the avoidance of delay
- examines the role of the victim
- prioritises support for the victim at court
- reviews the use of bind-over orders
- promotes appropriate sentencing levels.

The function of the prosecutor is to help to develop best practice in the handling of cases involving victims of domestic violence, to make the right decisions and to prosecute effectively. Decisions must be based on the fullest evidence and background information. Through the pursuit of viable prosecutions, those responsible for domestic violence must be brought to account.

The Standing Committee on Disclosure

The Standing Committee on Disclosure was established by the Prosecutions Division in 2004. Its mandate is to keep the Division's arrangements for the disclosure by the prosecution of evidence to the defence in the interests of fair trials under periodic review. In October 2005, the Policy Address was delivered, and the Policy Agenda announced there would be 'a comprehensive review of the disclosure arrangements of the law enforcement agencies in relation to material which requires to be revealed to the defence to

ensure the fair and proper conduct of criminal cases'. In 2006, therefore, the Standing Committee settled tailor-made guidelines for :

- the Independent Commission Against Corruption (April)
- the Customs and Excise Department (May)
- the Hong Kong Police Force (May)
- the Departmental Prosecution Services (July).

In 2005, the Standing Committee was asked to modernise the guidance provided to prosecutors in relation to their disclosure obligations. Having completed its task, the Standing Committee issued fresh guidelines in 2006. These guidelines both modernised and expanded the existing disclosure requirements in a way which emphasised the right of an accused to a fair trial. Topics addressed included :

- the obligation to disclose
- the disclosure test and its application
- what must be disclosed
- the timing of disclosure
- public interest immunity
- informants
- legal professional privilege.

International Association of Prosecutors

Throughout 2006, the Prosecutions Division played a full role in the International Association of Prosecutors (IAP), which it joined in 2001. The IAP facilitates communication between prosecutors in different places, it promotes best practice in the combat of transnational crime, and it provides a point of reference for prosecutors in the challenges they face. We liaised closely with our counterparts in other jurisdictions in order to enhance our ability to combat all types of transnational crime.

From 16 to 20 September 2007, at the Hong Kong Convention and Exhibition Centre, we will host the 12th Annual Conference and General Meeting of the IAP. The Conference will be attended by 500 prosecutors from over 100 countries, representing every region of the world. The theme of the Conference is *'Relations with Others : Accountability, Transparency and Independence'*. The Conference will examine the way in which prosecutors relate to others in the

community, and no issues are more important for prosecutors these days than accountability, transparency and independence. We look forward to welcoming the prosecutors of the world to Hong Kong, and to sharing perspectives and aspirations with our counterparts. The 12th Annual Conference promises to be a watershed for prosecutors everywhere.

Contacts with the Mainland and Macao

Throughout 2006, the Prosecutions Division promoted its contacts with legal officials from other parts of China. Prosecutors visited the Mainland and Macao to discuss comparative legal procedures, the combat of corruption, prosecutorial techniques, organized crime and the protection of human rights. We briefed **14** visiting delegations from elsewhere in China upon the operation of our legal system.

In 2006, pursuant to the Legal Services Co-operation Agreements, we welcomed officials from the Zhejiang Justice Department, the Nanjing Justice Bureau, the Shanghai Justice Bureau and the Shenzhen Justice Bureau. In turn, our prosecutors visited the Justice Bureaux of Beijing and Shenzhen. In June, July and August, ten legal officials, from the Supreme People's Prosecution Service, the Ministry of Public Security, the Ministry of Supervision and the Customs General Administration, were attached to the Division under the Training Scheme in Common Law for Mainland Legal Officials, and we explained to them the operation of a modern prosecution service based on the common law.

Key Areas of Prosecution Responsibility

The Division's teams of specialist prosecutors discharged a heavy workload in 2006. These included :

- (1) **Commercial Crime** : In 2006, there were **62** serious fraud cases investigated, each such case involving losses of at least **\$5 million**, and **21** persons were prosecuted for serious fraud offences. Reported losses in serious fraud complaints amounted in 2006 to **\$3.62 billion**.
- (2) **Copyright Crime** : In 2006, **776** cases were prosecuted involving criminal violations of the Copyright Ordinance, and **597** persons were imprisoned. Our Copyright Crime Team provided **84** advices to law enforcers.

- (3) **Corruption** : In 2006, there were **3,339** corruption reports to the ICAC. We prosecuted **341** persons for corruption and related offences, and provided **832** advices to the ICAC. Calculated on the number of cases, we secured convictions in **88%** of corruption cases.
- (4) **Customs Offences** : In 2006, our prosecutors advised the Customs and Excise Department on offences involving smuggling, licensing breaches, origin frauds and excise duty evasion. We gave **842** advices to Customs and prosecuted **1,554** smuggling cases, which resulted in the convictions of **1,193** persons and **207** companies.
- (5) **Environmental Protection** : In 2006, our prosecutors advised the Environmental Protection Department on offences involving pollution, noise, waste disposal, dumping at sea and the ozone layer. We prosecuted **341** cases for violations of environmental laws. Fines imposed by the courts totalled **\$3,281,000**.
- (6) **Gambling** : In 2006, we prosecuted **921** cases of unlawful gambling, and **4,936** persons were convicted of gambling offences.
- (7) **Immigration Offences** : In 2006, 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 prosecuted **15,365** persons for immigration offences, and **16,587** charges were laid, of which **15,808** resulted in convictions.
- (8) **Inland Revenue** : In 2006, we advised the Inland Revenue Department upon **14** of its investigations, and **7** cases were prosecuted. Total tax evaded in cases prosecuted was **\$8,397,583**.
- (9) **Labour and Occupational Safety** : In 2006, 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 **396** advices to the Labour Department, and prosecuted **5,193** labour cases, resulting in **3,881** convictions.

- (10) **Money Laundering** : In 2006, **116** persons were prosecuted for money laundering offences under the Organized and Serious Crimes Ordinance, and **\$4.447 million** of crime proceeds was confiscated. A further **\$40.003 million** was restrained pending court proceedings.
- (11) **Narcotics** : In 2006, we prosecuted manufacturers, distributors and possessors of dangerous drugs. In total, we prosecuted **353** 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 **4,135** persons were prosecuted for unlawful possession of dangerous drugs.
- (12) **Obscene Articles and Child Pornography** : In 2006, our prosecutors advised the Television and Entertainment Licensing Authority (TELA) on cases arising under the Control of Obscene and Indecent Articles Ordinance. TELA referred **457** articles to the Obscene Articles Tribunal for classification. Of these, **241** articles were classified as obscene, and **144** as indecent. These positive classifications resulted in **228** prosecutions.
- (13) **Social Welfare** : In 2006, our prosecutors provided the Social Welfare Department with **91** advices. We conducted **134** prosecutions, most typically involving fraudulent applications for social security, and the improper use of welfare payments, resulting in **130** convictions.
- (14) **Technology Crime** : In 2006, there were **741** reported cases of technology crime. We prosecuted **15** cases of computer crime, **11** persons were convicted. Our Computer Crime Team provided **41** advices to law enforcers.
- (15) **Triad and Organized Crime** : In 2006, we prosecuted **715** persons for triad society offences. Prosecutors made **34** applications for enhanced sentences for those convicted of offences under the Organized and Serious Crimes Ordinance.

Caseload

In 2006, there were **215,302** new prosecutions in the courts, as compared to **222,876** in 2005. In 2006, **14,895** advices were given in criminal cases, as compared to **14,707** advices in 2005.

In 2006, Government Counsel attended **1,340** court days in the Court of First Instance. That compared with **1,700** court days in 2005. In the District Court, the figures for 2006 and 2005, were, respectively, **778** and **866** court days. In the Magistrates Court, the figures for 2006 and 2005 were, respectively, **491** and **591** court days.

Our Court Prosecutors prosecuted a total of **177,034** cases in 2006 in the Magistrates Courts, involving **12,571** court days. That compared with **188,306** cases in 2005, involving **13,705** court days.

Conviction Rates

	<u>2005</u>	<u>2006</u>
Magistrates Court	73.5%	76.8%
District Court	87.5%	91.8%
Court of First Instance	90.4%	92.3%

Appeal Rates

	<u>2005</u>	<u>2006</u>
<u>Court of Appeal</u>		
Total no. of appeals determined	601	493
- Dismissed	241 (40.1%)	84 (17.1%)
- Allowed [in whole or in part]	111 (18.5%)	188 (38.1%)
- Abandoned	249 (41.4%)	221 (44.8%)

Magistracy Appeals

Total no. of appeals concluded	1,154	1,180
- Dismissed	579 (50.2%)	247 (20.9%)
- Allowed [in whole or in part]	200 (17.3%)	502 (42.6%)
- Abandoned	375 (32.5%)	431 (36.5%)

Court of Final Appeal (CFA)

The number of cases processed and conducted by the Prosecutions Division in 1997/2006 far exceeded the number that proceeded to the Privy Council prior to reunification. Thus :

From January 1988 to June 1997, (9½ years), there were **113** criminal cases from Hong Kong to the Privy Council.

In comparison :

Between July 1997 and December 2006 (9½ years), **829** CFA and CFA-related criminal cases were dealt with – an increase of **634%**.

Briefing Out Cases

In 2006, a substantial number of cases was 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 : **31** cases were briefed out, accounting for **744** court days. This may be compared with **380** cases prosecuted by Government Counsel, and accounting for **1,340** court days. The percentage of cases briefed out to private lawyers was **7.5%**, and **35.7%** of court days;
- (2) District Court : **530** cases were briefed out, accounting for **2,902** court days. This may be compared with **932** cases prosecuted by Government Counsel, and accounting for **778** court days. The percentage of cases briefed out to private lawyers was **36.3%**, and **78.9%** of court days;
- (3) Magistrates Court : **308** cases were briefed out, accounting for **720** court days. This may be compared with **265** cases prosecuted by Government Counsel, and accounting for **491** court days. The percentage of cases briefed out to private lawyers was **53.8%**, and **59.5%** of court days.

OVERALL PERCENTAGE OF BRIEFING OUT : **35.5%** of cases and **62.6%** of court days. [Compared to **35.0%** of cases, and **55.1%** of court days, in 2005.]

Court Prosecutors

In 2007, the Court Prosecutors as a grade celebrate their pearl anniversary. In the 30 years since their introduction in 1977, they have greatly advanced the rule of law at the summary level. The Court Prosecutors conduct the bulk of the cases tried in the courts of Hong Kong, and they also facilitate the efficient processing of cases. All of those concerned with the administration of justice owe them a great debt of gratitude. I thank the Court Prosecutors for their unswerving devotion to the interests of justice, in sometimes difficult circumstances, and for their immense contribution to our legal system.

Of the **96** Court Prosecutors in practice in 2006, **46** held legal qualifications. Whereas **9** were admitted as barristers, a further **7** had obtained their Postgraduate Certificates in Law (PCLL). A further **30** had law degrees, while **33** others were holders of degrees in other disciplines. At the end of 2006, **4** Court Prosecutors were studying for law degrees.

The average cost per court day of prosecutions conducted by a Court Prosecutor of **\$2,621** compares favourably with the fees for counsel prosecuting on general fiat of **\$5,430** per court day. If all the **12,571** court days conducted by Court Prosecutors in 2006 were to be briefed out to private counsel, it would cost about **\$68.3 million**, which is **107.6%**, or **\$35.4 million**, more than the **\$32.9 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 2006, we continued to promote the use of the Chinese language in criminal proceedings. Of our **100** Government Counsel, **85** were bilingual in 2006, while all **96** of our Court Prosecutors were proficient in Chinese and English. We organised **2** 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 **1,678** terms. Our Bilingual Court Documents Unit translated **6,068** pages of English documents into Chinese, and **350** Chinese documents into English. The figures for the use of Chinese language in criminal proceedings in 2006 show :

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Court of Appeal	22.7%	19.3%	26.4%
Court of First Instance (Magistracy Appeals)	56.8%	62.5%	63.2%
Court of First Instance (Trials)	21.2%	16.5%	23.5%
District Court	12.3%	11.8%	37.1%
Magistrates Court	68.7%	69.7%	75.2%

Conclusion

To succeed, a modern prosecution service must be modern in outlook, progressive in practice, and attuned to the needs of its community. It must also be adequately resourced, not least because this is the era of globalisation and transnational organized crime. Hong Kong is an advanced Asian city and a regional hub, and the challenge for the Prosecutions Division is to supply a sophisticated and expert service in all areas. We have come far since 1997, and we must maintain the momentum in the years ahead.

Our prosecution service has moved with the times, and its levels of expertise are now formidable. But greater specialisation is inevitable if investigators are to be properly advised and criminals brought to account. Our operations must be subject to ongoing scrutiny and development, and complete familiarity with latest prosecution techniques has to be actively promoted. Fundamental to this is close liaison with prosecutors in other places, full community engagement and comprehensive training.

In conclusion, I thank the Secretary for Justice, Mr. Wong Yan-lung, for the support and encouragement he gave to the Division throughout 2006. In his first full year of office, he provided us with important new perspectives, and took a keen interest in our operations. I am grateful to the Secretary for his advice and guidance, and thank him for his efforts on our behalf.

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