

The Yearly Review of the Prosecutions Division 2007

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

**A Statement by Mr. Grenville Cross, SC
on
24 April 2008**

Introduction

For the Prosecutions Division, 2007 proved to be a landmark year. At the international level, close links were forged with prosecutors from other jurisdictions in pursuit of better law enforcement and greater accountability. At the local level, our focus was very much on reform and modernisation, training and transparency. We worked in tandem with those who shared our commitment to a better legal system, and did all we could to strengthen our position in the community.

The Strategic Development Programme 2007-2012

The *Strategic Development Programme of the Prosecutions Division 2007-2012* (SDP) was introduced on 3 January 2007. The SDP is the third strategic review of the Division to have been undertaken since 1997, and is designed to chart the future of the prosecution service and to provide prosecutors with the necessary focus for the next five years. Areas of prosecutorial responsibility encompassed by the SDP include :

- service to the community
- strengthening of the Division
- specialisation amongst prosecutors
- training and development of new recruits
- career development and team building
- relations with others and liaison

- transparency and public education
- criminal justice reform.

The SDP contains a *Statement of Principle* for prosecutors, which is both practical and aspirational. Its function is to supply prosecutors with a ready reminder of the high standards to be expected of all of those engaged in the exercise of the prosecutorial function in the years ahead. The *Statement of Principle* is provided for guidance to those who conduct prosecutions at all tiers of court, as well as to those who advise on cases.

Prosecution Policy in 2007

Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions, free from any interference. Throughout 2007, prosecutors operated within the parameters of established prosecution policy guidelines, and took the decisions they believed to be just. Prosecutions were only instituted in cases where there was a reasonable prospect of conviction, and where it was in the public interest to proceed.

In 2007, prosecutors pursued **221,764** prosecutions, and gave **14,404** legal advices. Allegations of criminal conduct were carefully assessed by prosecutors, and wherever possible prosecution action was used as a sanction of last resort, particularly where young persons were concerned. As regards juvenile offenders aged up to 17 years, **2,736** or **39.8%** were cautioned by the police as an alternative to prosecution.

Throughout 2007, prosecutors reached out to victim groups, and explained prosecution policy and practice. We met with the End Child Sexual Abuse Foundation to discuss the plight of child victims. We exchanged views on the treatment of female crime victims with the Association Concerning Sexual Violence Against Women. We listened to the perspectives of Against Child Abuse. We also met with the Society for the Prevention of Cruelty to Animals to consider its concerns over the processing of animal cruelty cases and the sentencing of offenders at court. Our Vulnerable Witness Team worked closely with outside bodies on areas of concern, and sought better arrangements in the treatment of vulnerable witnesses.

Criminal Justice Initiatives in 2007

In 2007, the Division pursued measures to enhance the quality of criminal justice. Proposals to modernise the system of public prosecutions were implemented. Specific initiatives included :

- a manual of criminal advocacy to enhance standards of advocacy
- a manual of specimen charges to promote consistency in offence formulation
- the review of standing instructions to prosecutors
- a consideration of the pre-trial interviewing of witnesses by prosecutors
- a review of the levels of assistance provided to the media in criminal cases, and of how the prosecutor should best relate to the journalist.

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 under regular review and attuned to international standards. In 2007, the Standing Committee considered :

- the control and management of unused material in other jurisdictions
- the circumstances in which the disciplinary records of law enforcement officers are disclosable
- the standardisation of disclosure arrangements
- the effect of legal professional privilege
- the use of defence statements to improve the efficient delivery of justice.

Domestic Violence

The year 2007 was the first full year of operation of *The Policy for Prosecuting Cases involving Domestic Violence*, which prosecutors devised in 2006. *The Policy* set benchmarks for prosecutors, encouraged best practice in the treatment of victims, advanced transparency in an area of public concern and alerted victims to their rights.

The Policy is a practical guide, which places those affected by violence at the heart of our approach to prosecuting. It recognises that justice is

the right of those who are abused in a domestic context. In 2007, *The Policy* guided prosecutors in their dealings with others, both at the advisory stage and at court.

During 2007, *The Policy* highlighted the avoidance of delay in the processing of cases, prioritised victim support at court and promoted appropriate levels of sentencing for those convicted of offences of domestic violence.

International Association of Prosecutors

Throughout 2007, the Prosecutions Division played a full role in the International Association of Prosecutors (IAP), which it joined in 2001. The IAP promotes the just and effective prosecution of crime, and facilitates liaison amongst world prosecutors. In 2007, levels of co-operation with the IAP reached new levels.

From 16 to 20 September 2007, the Division hosted the 12th Annual Conference and General Meeting of the IAP. The Conference was attended by 510 prosecutors and accompanying guests, representing one hundred jurisdictions. The theme of the Conference was *'Relations with Others : Accountability, Transparency and Independence'*, and the prosecutors of the world shared ideas on how they should relate to others and secure the trust and understanding of the communities they serve. In the process, prosecutors helped one another to define their position in the 21st century.

At the Conference, the Division gained a seat on the Executive Committee of the IAP, for the first time. We will use that seat to work closely with senior prosecutors at the highest levels to promote global anti-crime strategies. We will also use our best endeavours to advance the greater interests of criminal justice.

Contacts with the Mainland and Macao

Throughout 2007, the Division pursued its policy of constructive engagement with legal officials from other parts of China. Prosecutors visited the Mainland and Macao to study developments and exchange views, and to explain our system of criminal justice. We briefed 8 delegations from elsewhere in China upon our legal arrangements.

In 2007, pursuant to the Legal Services Co-operation Agreements, we welcomed officials from the Beijing Justice Bureau. In turn, our prosecutors visited the Justice Bureaux of Chongqing and Nanjing. In June, July and August, legal officials from the Supreme People's Prosecution Service, the Supreme

People's Court, the Ministry of Public Security, the Ministry of Justice, the Hong Kong and Macao Affairs Office and the Liaison Office of the Central People's Government, were attached to the Division under the Training Scheme in Common Law for Mainland Legal Officials.

Key Areas of Prosecution Responsibility

In 2007, the Division's teams of specialist prosecutors confronted various crimes. These included :

- (1) **Commercial Crime** : In 2007, there were **83** serious fraud cases investigated, each such case involving losses of at least **\$5 million**, and **25** persons were prosecuted for serious fraud offences. Reported losses in serious fraud complaints amounted in 2007 to **\$3.43 billion**.
- (2) **Copyright Crime** : In 2007, **947** cases were prosecuted involving criminal violations of the Copyright Ordinance, and **773** persons were imprisoned. Our Copyright Crime Team provided **83** advices to law enforcers.
- (3) **Corruption** : In 2007, there were **3,600** corruption reports to the ICAC. We prosecuted **346** persons for corruption and related offences, and provided **759** advices to the ICAC. Calculated on the number of cases, we secured convictions in **85%** of corruption cases.
- (4) **Customs Offences** : In 2007, our prosecutors advised the Customs and Excise Department on offences involving smuggling, licensing breaches, origin frauds and excise duty evasion. We gave **621** advices to Customs and prosecuted **1,548** smuggling cases, which resulted in the convictions of **1,173** persons and **317** companies.
- (5) **Environmental Protection** : In 2007, our prosecutors advised the Environmental Protection Department on offences involving pollution, noise, waste disposal, dumping at sea and the ozone layer. We prosecuted **479** cases for violations of environmental laws. Fines imposed by the courts totalled **\$4,585,400**.
- (6) **Gambling** : In 2007, we prosecuted **817** cases of unlawful gambling, and **3,960** persons were convicted of gambling

offences.

- (7) **Immigration Offences** : In 2007, 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 **11,037** persons for immigration offences, and **12,042** charges were laid, of which **11,683** resulted in convictions.
- (8) **Inland Revenue** : In 2007, we advised the Inland Revenue Department upon **13** of its investigations, and **7** cases were prosecuted. Total tax evaded in cases prosecuted was **\$5,178,970**.
- (9) **Labour and Occupational Safety** : In 2007, 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 **436** advices to the Labour Department, and prosecuted **5,368** labour cases, resulting in **4,554** convictions.
- (10) **Money Laundering** : In 2007, **310** persons were prosecuted for money laundering offences under the Organized and Serious Crimes Ordinance, and **\$19.45 million** of crime proceeds was confiscated. A further **\$723.23 million** was restrained pending court proceedings.
- (11) **Narcotics** : In 2007, we prosecuted manufacturers, distributors and possessors of dangerous drugs. In total, we prosecuted **442** 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 **5,060** persons were prosecuted for unlawful possession of dangerous drugs.
- (12) **Obscene Articles and Child Pornography** : In 2007, our prosecutors advised the Television and Entertainment Licensing Authority (TELA) on cases arising under the Control of Obscene and Indecent Articles Ordinance. TELA referred **217** articles to the Obscene Articles Tribunal for classification. Of these, **59** articles were classified as

obscene, and **87** as indecent. These positive classifications resulted in **76** prosecutions.

- (13) **Social Welfare** : In 2007, our prosecutors provided the Social Welfare Department with **348** advices. We conducted **211** prosecutions, most typically involving fraudulent applications for social security, and the improper use of welfare payments, resulting in **208** convictions.
- (14) **Technology Crime** : In 2007, there were **634** reported cases of technology crime. We prosecuted **21** cases of computer crime, and **20** persons were convicted. Our Computer Crime Team provided **32** advices to law enforcers.
- (15) **Triad and Organized Crime** : In 2007, we prosecuted **853** persons for triad society offences. Prosecutors made **37** applications for enhanced sentences for those convicted of offences under the Organized and Serious Crimes Ordinance.

Caseload

In 2007, there were **221,764** new prosecutions in the courts, as compared to **215,302** in 2006. In 2007, **14,404** advices were given in criminal cases, as compared to **14,895** advices in 2006.

In 2007, Government Counsel attended **1,118** court days in the Court of First Instance. That compared with **1,340** court days in 2006. In the District Court, the figures for 2007 and 2006, were, respectively, **755** and **778** court days. In the Magistrates Court, the figures for 2007 and 2006 were, respectively, **484** and **491** court days.

Our Court Prosecutors prosecuted a total of **179,161** cases in 2007 in the Magistrates Courts, involving **12,023** court days. That compared with **177,036** cases in 2006, involving **12,571** court days.

Conviction Rates

	<u>2006</u>	<u>2007</u>
Magistrates Court	76.8%	76.6%
District Court	91.8%	90.5%
Court of First Instance	92.3%	93.4%

Criminal Appeals

Court of Final Appeal (CFA)

The number of CFA and CFA-related criminal cases processed and conducted by the Prosecutions Division in 1997/2007 far exceeded the number that proceeded to the Privy Council prior to reunification. Thus :

From January 1987 to June 1997, (10½ years), there were **128** criminal cases from Hong Kong to the Privy Council.

In comparison :

Between July 1997 and December 2007 (10½ years), **940** CFA and CFA-related criminal cases were dealt with – an increase of **634%**.

Appeals Rates for 2007

	<u>Court of Appeal</u>	<u>Magistracy Appeals</u>
Total no. of appeals determined	552	1,192
- Dismissed	216 (39.1%)	512 (43%)
- Allowed [in whole or in part]	113 (20.5%)	254 (21.3%)
- Abandoned	223 (40.4%)	426 (35.7%)

Briefing Out Cases

In 2007, a substantial number of cases was briefed out to private lawyers to prosecute on our behalf. This arrangement facilitates the operation of the Division, and provides the legal profession as a whole with valuable experience of public prosecutions. The briefing out statistics were :

- (1) Court of First Instance : **37** cases were briefed out, accounting for **529** court days. This may be compared with **376** cases prosecuted by Government Counsel, and accounting for **1,118** court days. The percentage of cases briefed out to private lawyers was **9%**, and **32.1%** of court days;

- (2) District Court : **554** cases were briefed out, accounting for **2,881** court days. This may be compared with **895** cases prosecuted by Government Counsel, and accounting for **755** court days. The percentage of cases briefed out to private lawyers was **38.2%**, and **79.2%** of court days;
- (3) Magistrates Court : **466** cases were briefed out, accounting for **1,189** court days. This may be compared with **274** cases prosecuted by Government Counsel, and accounting for **484** court days. The percentage of cases briefed out to private lawyers was **63%**, and **71.1%** of court days.

OVERALL PERCENTAGE OF BRIEFING OUT : **40.6%** of cases and **66.1%** of court days.

Court Prosecutors

In 2007, the Court Prosecutors as a grade celebrated their pearl anniversary. In the 30 years since their introduction in 1977, they have greatly advanced the standards of criminal justice in the magistrates courts. The Court Prosecutors conduct the bulk of the prosecutions in the magistrates courts, facilitate efficient case management and administration, liaise with our criminal justice partners, and lecture law enforcement agencies. By common consent, they provide an outstanding service at the summary level in all areas, and I pay tribute to their excellent work and their commitment to a high quality prosecution service at the summary level.

Of the **96** Court Prosecutors in practice in 2007, **48** held legal qualifications. Whereas **9** were admitted as barristers, **1** was admitted as a solicitor, and a further **7** had obtained their Postgraduate Certificates in Law (PCLL). A further **31** had law degrees, while **33** others were holders of degrees in other disciplines. At the end of 2007, **2** Court Prosecutors were studying for law degrees.

In addition to providing a service of the highest quality, the Court Prosecutors achieve this at a cost which is reasonable. The average cost per court day of prosecutions conducted by a Court Prosecutor of **\$2,787** compares favourably with the fees for counsel prosecuting on general fiat of **\$5,430** per court day. If all the **12,023** court days conducted by Court Prosecutors in 2007 were to be briefed out to private counsel, it would cost about **\$65.3 million**, which is **94.9%**, or **\$31.8 million**, more than the **\$33.5 million** cost of the Court Prosecutors.

Chinese Language Programme

Throughout 2007, the Division pursued its programme to promote the use of the Chinese language in criminal proceedings. Of our **108** Government Counsel, **95** were bilingual in 2007, while all **96** of our Court Prosecutors were proficient in Chinese. 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 **1,736** terms. Our Bilingual Court Documents Unit translated **4,947** pages of English documents into Chinese, and **116** Chinese documents into English. The figures for the use of Chinese language in criminal proceedings in 2007 show :

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Court of Appeal	19.3%	26.4%	27.4%
Court of First Instance (Magistracy Appeals)	62.5%	63.2%	71.4%
Court of First Instance (Trials)	16.5%	23.5%	24.7%
District Court	11.8%	37.1%	31.9%
Magistrates Court	69.7%	75.2%	83.6%

Conclusion

No system of criminal justice can succeed without a fair and focused prosecution service. Those involved in public prosecutions must keep their operations under regular review, and embrace reform whenever necessary. Specialisation amongst prosecutors is essential if sophisticated crimes are to be successfully prosecuted, and if public confidence is to be maintained. Our pledge is to do all we can to provide a prosecution service which is modern, effective and just.

The globalisation of crime requires the prosecutors of the world to assist one another. If there is close co-operation the problems of transnational offending can be countered, and anti-crime strategies developed. The exchange of ideas and experiences is central to international initiatives to promote more secure societies. Common agendas must be pursued, and every effort made to take the profit out of organized crime. We commit ourselves to working in harness with our counterparts elsewhere in the interests of the community we serve.

The modern prosecutor should be transparent, resolute, sensitive and imaginative. Transparent in relation to the community, and also accountable. Resolute in the taking of decisions that are considered just. Sensitive in dealings

with victims of crime and witnesses, and understanding of their concerns. Imaginative in response to the problems posed by complex crime, and prepared to apply latest techniques. We shall continue to do all we can to meet public expectations.

In conclusion, I thank the Secretary for Justice, Mr. Wong Yan Lung, for the advice and support he gave to the Division in its work and initiatives throughout 2007.

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