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刑事檢控專員的序言

Director's Overview

2018 年是我擔任刑事檢控專員的首年，剛好本司也由新任律政司司長領導。

新章肇啟，總帶來新的機遇和挑戰。前任刑事檢控專員楊家雄法官建樹良多，我慶幸能受惠其中。他任內開設的新職位在 2018 年設立，刑事檢控科的檢控官人數在年底達 145 名，為歷年之冠。隨着人手增加，加上我以提升檢控官的訟辯技巧為目標，更多年資較淺的檢控官獲指派與較資深的檢控官一同就審訊和上訴出庭檢控，令檢控官處理的案件數目較 2017 年增加 11%。

此外，我們很榮幸邀得布思義資深大律師就不同審訊階段—開案陳詞、盤問證人和結案陳詞—主講一系列講座、Collingwood Thompson 御用大律師就新興議題“法團賄賂與加密數碼貨幣”主講講座，以及其中一名前任刑事檢控專員上訴法庭法官薛偉成就“高等法院內的訟辯”分享睿智明識，使我們獲益良多。這些講座讓本科檢控人員適時重溫訟辯技巧的基本原則，並提供最新的法律專題知識。

此外，我們也繼續每年參加海外訟辯課程，維持與國際社會的聯繫。年資較淺的檢控官參加為期兩星期的倫敦中殿大律師學院訟辯培訓課程，接受全面的小組培訓，內容涵蓋不同訟辯範疇，包括向陪審團陳詞和處理證人。較資深的檢控人員則會到英國牛津大學基布爾學院參加一星期密集式的高級國際訟辯課程。上述兩項課程均由英國頂尖大律師主持，後者更由世界各地的頂尖大律師主持。檢控官不僅把所得的寶貴經驗和技巧應用在日常工作上，也會秉承優良傳統，把他們所

2018 was the first year since I became DPP. Incidentally, the Department was also headed by the new Secretary for Justice.

A new chapter always comes with new opportunities and challenges. I was fortunate to benefit from one of the numerous good work of my predecessor Mr Justice Keith Yeung - the new posts he created during his tenure came into existence in 2018. The number of counsel in the Prosecutions Division reached the historical height of 145 by the end of 2018. With the additional manpower and my goal to enhance the advocacy skills of Public Prosecutors, more junior prosecutors have been assigned to prosecute trials and appeals together with more experienced prosecutors. This resulted in an increase by 11% of the number of cases conducted by Public Prosecutors when compared with 2017.

In addition, we were honored to have Mr Andrew Bruce SC giving us a series of lectures on the different stages of trials - opening speech, examination of witness and closing speeches. Mr Collingwood Thompson QC gave us a talk on the thriving topic of "Corporate Bribery and Crypto-currency". We also had the benefit of the wisdom of one of the former DPPs, Mr Justice of Appeal Zervos who shared his insight with us on "Advocacy in the High Court". All these talks provided our prosecutors with timely reminder of the basic principles of advocacy skills and update knowledge of topical issues.

Meanwhile, we maintain our international link by continuing to participate annually in overseas advocacy courses. Junior Public Prosecutors attended a two-week Middle Temple Advocacy Course in which they received comprehensive small group trainings on different aspects of advocacy, including delivering speeches to jury and witness handling. More experienced prosecutors would attend an intensive one-week Advanced International Advocacy Course at Keble College, Oxford, the United Kingdom.

得經驗在香港大律師公會舉辦的訟辯培訓課程中傳承下去。

雖然 2018 年的公眾秩序活動減少，但年內法庭仍須分別審訊佔領中環行動和旺角暴亂事件中的被告及審理若干相關的上訴案件。

我注意到有市民把我們檢控某些涉及政治事實背景的案件說成是“政治檢控”，對此我感到遺憾。正如我在檢控週 2018 開幕儀式致辭時公開表示，這種指控令我感到難受。

檢控官負責秉行公義，不會按照執法機關的指示行事。執法機關並非我們的委託人或委託部門，他們履行調查職責，然後把所得的證據交給律政司。檢控官會考慮所獲得的證據，決定應否提出刑事檢控，如提出檢控，再決定控以何罪以確切反映所涉刑責。我們不會不惜一切代價令被告入罪，我們的職責是確保所有被告都得到公平審訊。

容我不厭其煩地重申檢控人員如何作出檢控決定。首先，我們會評估所獲得的證據能否支持合理機會達致定罪，如能支持，則考慮檢控是否符合公眾利益。政治或涉案人士的政治背景都不是決定檢控與否的考慮因素。在決定過程中，檢控人員的職責並非探究犯罪主因或背景的是非曲直。終審法院在律政司司長訴黃之鋒及另二人 (2018) 21 HKCFAR 35 一案判案書第 75 段所述最能闡釋這點：“……法院不會衡量犯罪者所主張的信念是否可取……然而，法院的工作不是就政治問題表態，也不是裁斷某一套社會或其他範疇的價值觀較另一套可取”。

同樣，在處理刑事上訴案件時，除非我們信納被告是妥為定罪，否則我們不會尋求維持所有定罪。有時（雖非經常），我們更會提出一些上訴人在其上訴理由內未有提及，但或會令他們的定罪或判刑上訴得直的論點，這也是為了對上訴人公平起見而為之。

Both courses are conducted by leading counsel from the United Kingdom, with the latter also by leading counsel worldwide. Not only will Public Prosecutors apply the invaluable experience and skills gained in their daily work, they will also follow the good tradition and pass on their experience earned in the advocacy training courses organized by the Hong Kong Bar Association.

Although the number of public order events that took place in 2018 had dropped, the trials of the defendants in the Occupy Central Movement and the Mongkok Riots, and some of the related appeals, saw their respective days in court in 2018.

I regret to note that some members of the public accused the prosecution of certain cases having a political factual background as “political prosecution”. As I said openly at the Opening Ceremony of the Prosecution Week 2018, I am saddened by such accusation.

Public Prosecutors are ministers of justice. We do not take instructions from law enforcement agencies. They are not our clients or client departments. They carry out their investigative duties and submit all the available evidence to the Department of Justice. Public Prosecutors consider the available evidence and decide whether criminal charges should be laid and if so, what charge(s) best reflect(s) the criminality involved. We do not seek to secure a conviction at all costs. Our role is to ensure that every defendant receives a fair trial.

I make no apologies for repeating how a prosecutor makes a prosecutorial decision. Firstly, whether the available evidence supports a reasonable prospect of conviction and if so, whether it is in the public interest to prosecute. Politics or political background of the person involved plays no part in prosecutorial decision-making. In the process, it is not the function of a prosecutor to dwell into the merits of the underlying cause or background leading to the commission of the offence. I can do no better than repeating what the Court of Final Appeal said in *Secretary for Justice v Wong Chi Fung & 2 others* (2018) 21 HKCFAR 35 at para 75: “...the court will not enter into an evaluation of the worthiness of the cause espoused... It is not, however, the task of the courts to take sides on issues that are political or to prefer one set of social or other values over another.”

Likewise, in criminal appeals, we do not seek to uphold all convictions unless we are satisfied that the conviction was entered into properly. Occasionally, though not often, in fairness to the appellant(s), we raise points not covered in the appellant's grounds of appeal which



我們為了香港的福祉，代表公眾作出檢控。即使工作日益不討好，即使面對種種批評和重重責難，我們定必戮力同心緊守崗位，迎難而上，並莊敬自強，以秉持公義為己任，致力維持優質的檢控服務。我們今年的表現較去年進步，期望來年更上層樓。得此成果，實有賴科內一眾檢控和支援人員專業幹練、竭誠勤勉所致。

may potentially lead to the allowing of the appeal against conviction or sentence.

We prosecute in the name of the public for the good of Hong Kong. We shall do so even though it is an increasingly thankless task. We shall do so amidst tides of criticisms and abuses. We shall brave the storm, together as a Division; and with dignity, fulfill our duty to uphold justice. We strive to do our best to maintain a high quality prosecution service. We did better than in 2017 and aim for further improvement in 2019. This would not have been possible without the professionalism, dedication and hard work of all the prosecutors and supporting staff of the Prosecutions Division.