

# 刑事檢控專員的序言

## Director's Overview



**楊美琪** 刑事檢控專員  
**Maggie Yang** Director of Public Prosecutions

2020年為本科帶來了空前的挑戰，我們本着堅定的熱誠和意志，奮力克服。我亦在刑事檢控專員的新崗位上竭力伸張公義，堅守信念，為公眾提供優質的檢控服務。

我們在2020年面對的根本挑戰，是處理的案件性質愈來愈具爭議性。在部分案件，特別是一些政治敏感的案件中，我們的檢控決定往往受到社會上不同政治光譜人士無理、偏頗的批評。最遺憾是有人指控我們作出“政治檢控”，或認為本司提出某項檢控是由於外界干預或施壓所致。在此背景下，更須突顯本科的獨立自主，因此本年度的工作回顧正好以“無懼無私、不偏不倚地伸張公義”作為主題。

本司負責香港的刑事檢控工作。在履行此職能時，本司享有受憲法保障的獨立性。香港《基本法》第六十三條訂明，本司“主管刑事檢察工作，不受任何干涉”。檢控獨立經此確立，檢控人員可按既定的規範執行職務，無懼受到政治干預，或任何不當或不必要的壓力左右。

檢控人員向來以最高的專業水平處理刑事案件，時刻把持同等尺度，不偏不倚地秉行公義。不論案件性質，所有檢控決定均嚴格依據法律、《檢控守則》和證據作出，不受任何干預。本司就每宗案件決定檢控與否時，必須就所得證據和適用法律進行客觀、不偏不倚的專業評估。除非有足夠可接納的證據支持有合理機會達至定罪，否則不會提出檢控。既有足夠證據提出檢控，部門才會考慮檢控是否符合公眾利益。所有檢控決定均嚴格依據這些原則作出，被告人的政治立場與我們是否提出檢控毫不相干，也完全不在考慮之列。

執法機關負責調查工作，在完成調查後，會視乎需要把案件連同蒐集所得的證據轉介本司，然後由檢控人員作出獨立的決定，包括是否提出檢控。雖然我們或會向執法機關釐清關於調查的事宜，但檢控決定是由本科作出，全然獨立公正。眾所明瞭，律政司主管刑事檢察工作，不受任何干涉。

The year of 2020 presented unprecedented challenges to the Division. The Division strived to overcome the challenges with dedication and determination. I am committed to serving justice in the new role as the Director with the conviction of maintaining an excellent prosecution service for the public.

A fundamental challenge we faced in 2020 was the increasingly controversial nature of the cases we handled. In some of the cases especially those politically sensitive ones, our prosecutorial decisions were often subject to baseless and biased criticisms from different political spectrum of the society. Most regrettably, there were accusations of “political prosecution”, or suggestion that a particular prosecution was instituted because of interference or pressure from party outside the Department. Against such backdrop, it is all the more important to highlight the independence of the Division, hence the theme of the year’s review, that is, “Serving Justice without Fear, Favour or Prejudice”.

The Department is responsible for the conduct of criminal proceedings in Hong Kong. In the discharge of that function, the Department enjoys an independence which is constitutionally guaranteed. Article 63 of the Basic Law of Hong Kong stipulates that the Department “shall control criminal prosecutions, free from any interference”. Such entrenched prosecutorial independence enables prosecutors to discharge their duties within secure parameters. Prosecutors act independently without the fear of political interference or improper or undue influence.

Prosecutors have always adhered to the highest of professional standards in handling criminal cases for justice to be administered with equal measure and in an even-handed manner at all times. Regardless of the nature of the cases, all prosecutorial decisions have always been made strictly in accordance with the law, the Prosecution Code and evidence, free from any interference. In making the decision of whether or not to prosecute in each case, the Department must make an objective, unbiased and professional assessment of the available evidence and applicable law. Unless there is sufficient admissible evidence to support a reasonable prospect of conviction, no prosecution shall be commenced. Only if there is sufficient evidence to initiate a prosecution, the Department will then consider whether it is in the public interest to do so. The decisions on prosecution are made strictly in accordance with these principles. The political stance of the defendant is completely irrelevant and has no place at all in making our prosecutorial decisions.



現今世代，刑事案件資料可輕易取得並廣泛流傳，檢控決定經常受到傳媒和公眾嚴厲監察。本科檢控人員更曾遭某些市民惡意無理謾罵。檢控人員能夠立場堅定，繼續果敢地履行“秉行公義者”的角色，尤為必要。檢控決定往往引起爭議，檢控人員必須無畏無懼，也要性格剛強，能承受各方批評，不管這些批評是如何嚴厲或令人難堪。檢控人員對案件作出判斷時，絕不能屈服於政治、傳媒或公眾的壓力。

對本科來說，繁重的工作仍是主要的挑戰。我們提出的覆核刑罰申請日益增多，正是一例。依據《刑事訴訟程序條例》第 81A 條，律政司司長可就上訴法庭以外任何法庭所判處的刑罰，基於該刑罰原則上錯誤或明顯不足，向上訴法庭申請覆核。2020 年，我們共提出 17 宗此等覆核刑罰申請，比 2018 年及 2019 年分別多出六宗和四宗。值得一提的是，在這 17 宗申請中，有 14 宗關乎公眾秩序活動。上訴法庭裁定該 14 宗覆核全數得直，改判別的刑罰。我們本着政治中立的態度，客觀專業地評估案件後，才決定提出覆核刑罰申請，並已審慎考慮相關法律和判刑原則。

The law enforcement agencies conduct investigation. After completion of the investigation, if needed, they refer the cases to the Department with the evidence gathered. Our prosecutors then make independent prosecutorial decisions including whether a prosecution shall be instituted. Whilst we may seek clarifications from law enforcement agencies regarding matters of investigation, the prosecutorial decision is made by our Division totally independently and impartially. There has been clear understanding that our Department shall control criminal prosecutions, free from any interference.

In the present age where information of criminal cases is easily accessible and widely circulated, prosecutorial decisions are constantly under the critical scrutiny of the media and the public. There were even occasions where our prosecutors were subject to malicious and baseless verbal abuse from certain members of the public. It is all the more important that prosecutors must be able to stand firm and continue to perform our role with fortitude as “minister of justice”. Fearlessness is an essential quality of prosecutors, as prosecutorial decisions are often controversial and the prosecutor must have the strength of character to withstand criticism from whatever quarter, no matter how strident or painful. The judgment of the prosecutor on a case must never be overborne by political, media or public pressure.

Heavy caseload remained a major challenge to the Division. An example is the growing number of applications for review of sentence we initiated. Pursuant to section 81A of the Criminal Procedure Ordinance, the Secretary for Justice may apply to the Court of Appeal for the review of sentence passed by any court, other than the Court of Appeal, on the ground that the sentence is wrong in principle or manifestly inadequate. In 2020, a total of 17 applications for such review of sentence were initiated, up from 6 and 4 of such applications in 2018 and 2019 respectively. It is noteworthy that, out of these 17 applications, 14 of them were related to public order events. The Court of Appeal allowed all 14 of them and substituted a different sentence. The decision to initiate applications for review of sentence were made after objective and professional assessment of the cases in an apolitical manner and careful regard to the laws and principles of sentencing.

During the year, the COVID-19 pandemic had brought exceptional challenges to Hong Kong. The Government introduced resolute and rigorous measures in response. Compulsory quarantine orders were imposed on persons arriving in Hong Kong from specified places, unless the prescribed exemptions were applicable. Contravention of the quarantine requirement would be a criminal offence.

年內，2019 冠狀病毒病疫情為香港帶來前所未有的挑戰。政府採取果斷和嚴厲的措施應對，向從指明地區到港的人施加強制檢疫令，只有訂明的豁免適用者除外。違反檢疫規定屬刑事罪行。

嚴格遵從檢疫令對香港應對疫情至為重要。刑事司法制度在這方面擔當核心角色。就涉嫌違反檢疫令的案件，執法機關會進行調查和蒐集證據，其後會在適當情況下把案件轉交本司作出檢控決定。儘管疫情擾亂了工作環境，本科的檢控人員迅速應對，就檢控決定向執法機關作出指示，並妥當和從速管理檢控案件。在一些案件中，違反檢疫規定而被定罪的被告被判監禁數星期。這向社會傳達清晰的阻嚇訊息：違反檢疫令是嚴重罪行，此種行為不得容忍。本科的檢控人員致力維持有效的刑事司法制度，決心克服危機。

檢控官作為司法侍者，履行重要公職。我們要決定是否對被告人提出檢控，並進行檢控程序。我們完全認同有需要維持公眾對刑事司法制度的信心，而社會對我們維持公平有效的刑事司法制度寄予厚望。

我們不會迴避責任，定當以最高的專業標準處理刑事案件。我會確保本科檢控人員接受最佳培訓，並得以擴闊視野。特別是，本科檢控人員會在更多審訊和上訴中出庭檢控，從而提升訟辯技巧，年資較淺的檢控官亦會得到適當的指引。本科也會繼續舉辦研討會，讓檢控人員了解法律的最新發展。作為新措施的一部分，我們已安排本科資深檢控人員與科內其他成員分享見解和經驗，以期鼓舞和啟發年輕一代。

法治、司法和檢控獨立，以及發表自由等基本權利，是香港的核心價值。本科致力維護這些價值，在履行檢控職責時無畏無懼、公平公正、不偏不倚。在同事堅定不移的支持下，我確信本科定會迎難而上，繼續持正不阿，伸張公義。

Strict compliance with quarantine orders is of paramount importance in Hong Kong's fight against the pandemic. The criminal justice system has a central role to play in this respect. In suspected cases of contravention of quarantine orders, the law enforcement agencies would conduct investigations and gather evidence. Thereafter, if appropriate, some of these cases would be referred to our Department for making prosecutorial decisions. Notwithstanding the disruption posted by the pandemic to the work setting, our prosecutors responded rapidly in instructing the law enforcement agencies on prosecutorial decisions and managed the prosecutions properly and expeditiously. In some cases, for the defendants who were convicted of contravening the quarantine requirements, they were sentenced to imprisonment for weeks. This serves as a clear deterrent message to the community that breaching the quarantine orders is a serious offence and such conduct would not be tolerated. Our prosecutors are determined to emerge from the crisis and committed to maintaining an effective criminal justice system.

Public prosecutors, being servants of justice, perform an important public responsibility. We make decision on whether or not to institute prosecution of a defendant, and to conduct prosecution. We fully acknowledge the need to maintain public confidence in the administration of criminal justice, and that the community has a high expectation on us in maintaining an effective and fair criminal justice system.

We do not shy away from our responsibility to apply the highest of standards in the handling of criminal cases. I will see to it that our prosecutors will receive the best training and exposure. In particular, our prosecutors will prosecute more trials and appeals to enhance their advocacy skill. Appropriate guidance will be provided to junior prosecutors. Our Division will also continue to provide seminars to keep prosecutors abreast of the latest development of the law. As part of the new initiatives, we have arranged our veteran prosecutors to share their insights and experiences with other members of the Division with the aim of inspiring and enlightening the younger generations.

The rule of law, judicial and prosecutorial independence and fundamental rights such as freedom of expression are the core values of Hong Kong. The Division is committed to safeguard these values and to discharge the prosecutorial duties fearlessly, fairly and without prejudice. With the strong and unfailing support of my colleagues, I have no hesitation that our Division will rise to the challenges and continue to deliver justice with integrity.