

The Yearly Review of the Prosecutions Division 2008

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

**A Statement by Mr. Grenville Cross, SC
on
23 April 2009**

Introduction

Today we report to the public upon the work of the Prosecutions Division of the Department of Justice in 2008, which was an eventful year for our prosecutors. We strengthened our capacity to prosecute all types of crime, and prosecutions were fairly and effectively conducted. The quality of justice available to victims and witnesses was enhanced, and the interests of those accused of crime were safeguarded. Close collaboration with local law enforcers was pursued, and liaison with prosecutors elsewhere yielded positive results. Criminal justice reform was accorded a high priority, and in key areas our processes were modernised. Transparency was embraced, and we engaged with the community in all areas.

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 reunification in 1997, and it provides focus and foresight to our activities. In its second full year of operation, prosecutors brought much of the SDP to fruition. Partnerships were strengthened, liaison was improved, professionalism was encouraged, expertise was enhanced and the emphasis was upon advancing a prosecution service which was modern, transparent and just. New prosecutors were recruited, specialist training was promoted and the title of '*Public Prosecutor*' for intermediate level counsel was adopted, instead of '*Government Counsel*', to underline the independence of the prosecutorial function.

Prosecution Policy in 2008

Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions, free from any interference. Throughout 2008,

prosecutors asserted their independence whenever necessary, and objectively assessed the merits of cases. Before prosecutions were instituted, there had at least to be a reasonable prospect of conviction, and the laying of charges had to be in the public interest.

In 2008, prosecutors pursued **248,403** prosecutions, and gave **15,356** legal advices. Where possible, prosecution action was taken as a last resort, and particularly with young persons alternatives to prosecution were considered. As regards juvenile offenders aged up to 17 years, **2,358** or **37.4%** were cautioned by the police as an alternative to prosecution.

Criminal Justice Initiatives in 2008

The reform of criminal justice engaged the Prosecutions Division in 2008. Its prosecutors advocated change whenever necessary, and were active on various fronts. The Division completed a series of initiatives, including :

- a manual on disclosure for the guidance of prosecutors
- a manual of specimen charges to ensure consistency in the settling of indictments and charge sheets
- a manual on advocacy, to enhance the preparation and presentational skills of prosecutors
- new prosecution policy guidelines
- measures to fast-track cases of domestic violence.

International Association of Prosecutors

Throughout 2008, 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 2008, we co-operated closely with the IAP in order to enhance our ability to combat all forms of transnational crime.

In 2008, the Prosecutions Division was awarded the Certificate of Merit of the IAP in recognition of its contributions to the objectives of the Association. This honour was a welcome recognition of the status now enjoyed at the international level by the Division. This was the second occasion since 2001 on which the IAP Certificate of Merit had been awarded to Hong Kong.

After the Division gained a seat on the Executive Committee of the IAP in 2007 for the first time, we used that position throughout 2008 to project our thinking and to promote global anti-crime strategies with senior prosecutors at the highest levels.

Contacts with the Mainland and Macao

Throughout 2008, the Prosecutions Division developed its contacts with legal officials from other parts of China. Our prosecutors visited the Mainland and Macao to exchange views and study developments, and also to promote greater understanding of the legal arrangements in Hong Kong. We briefed **10** visiting delegations from elsewhere in China upon our legal arrangements.

In 2008, pursuant to the Legal Services Co-operation Agreements, the Division welcomed officials from the Zhejiang Justice Department, the Shenzhen Justice Bureau, the Nanjing Justice Bureau, the Qingdao Justice Bureau, the Chongqing Justice Bureau and the Shanghai Justice Bureau. In turn, our prosecutors visited the Justice Bureaux of Nanjing and Shanghai. In June and August, legal officials from the Ministry of Justice, the Legislative Affairs Office of the State Council and the Zhejiang Justice Department were attached to the Division under the Training Scheme in Common Law for Mainland Legal Officials. In June, a delegation of Court Prosecutors conducted a legal study visit to Foshan, Guangdong Province, and shared experiences with prosecutors, judges and law enforcement personnel.

Key Areas of Prosecutorial Responsibility

In 2008, the Prosecutions Division's teams of specialist prosecutors discharged wide duties. These included :

- (1) **Commercial Crime** : In 2008, there were **92** serious fraud cases investigated, each such case involving losses of at least **\$5 million**, and **38** persons were prosecuted for serious fraud offences. Reported losses in serious fraud complaints amounted in 2008 to **\$4.77 billion**.
- (2) **Copyright Crime** : In 2008, **845** cases were prosecuted involving criminal violations of the Copyright Ordinance, and **672** persons were imprisoned. Our Copyright Crime Team provided **77** advices to law enforcers.
- (3) **Corruption** : In 2008, there were **3,377** corruption reports to the ICAC. We prosecuted **333** persons for corruption and related offences, and provided **749** advices to the ICAC. Calculated on the number of cases, we secured convictions in **84.9%** of corruption cases.
- (4) **Customs Offences** : In 2008, our prosecutors advised the Customs and Excise Department on offences involving smuggling, licensing breaches, origin frauds and excise duty evasion. We gave **639** advices to Customs and prosecuted **1,712** smuggling cases, which

resulted in the convictions of **1,050** persons and **449** companies.

- (5) **Environmental Protection** : In 2008, our prosecutors advised the Environmental Protection Department on offences involving pollution, noise, waste disposal, dumping at sea and the ozone layer. We prosecuted **513** cases for violations of environmental laws. Fines imposed by the courts totalled **\$3,410,400**.
- (6) **Food and Environmental Hygiene** : In 2008, we provided **396** advices to the Food and Environmental Hygiene Department. In total, **11,695** persons/companies were prosecuted for offences involving violations of the food and environmental hygiene laws, and these resulted in **9,459** convictions.
- (7) **Gambling** : In 2008, we prosecuted **646** cases of unlawful gambling, and **2,992** persons were convicted of gambling offences.
- (8) **Immigration Offences** : In 2008, 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 **10,601** persons for immigration offences, and **11,225** charges were laid, of which **10,830** resulted in convictions.
- (9) **Inland Revenue** : In 2008, we advised the Inland Revenue Department upon **5** of its investigations, and **2** cases were prosecuted. Total tax evaded in cases prosecuted was **\$288,716**.
- (10) **Labour and Occupational Safety** : In 2008, 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 **318** advices to the Labour Department, and prosecuted **5,030** labour cases, resulting in **4,372** convictions.
- (11) **Money Laundering** : In 2008, **364** persons were prosecuted for money laundering offences under the Organized and Serious Crimes Ordinance, and **\$11.01 million** of crime proceeds was confiscated. A further **\$409.98 million** was restrained pending court proceedings.
- (12) **Narcotics** : In 2008, we prosecuted manufacturers, distributors and possessors of dangerous drugs. In total, we prosecuted **576** 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 **5,212** persons were prosecuted for unlawful possession of dangerous drugs.

- (13) **Obscene Articles and Child Pornography** : In 2008, our prosecutors advised the Television and Entertainment Licensing Authority (TELA) on cases arising under the Control of Obscene and Indecent Articles Ordinance. TELA referred **124** articles to the Obscene Articles Tribunal for classification. Of these, **59** articles were classified as obscene, and **55** as indecent. These positive classifications resulted in **8** prosecutions.
- (14) **Social Welfare** : In 2008, our prosecutors provided the Social Welfare Department with **536** advices. We conducted **304** prosecutions, most typically involving fraudulent applications for social security, and the improper use of welfare payments, resulting in **231** convictions.
- (15) **Technology Crime** : In 2008, there were **791** reported cases of technology crime. We prosecuted **25** cases of computer crime, and **19** persons were convicted. Our Computer Crime Team provided **63** advices to law enforcers.
- (16) **Triad and Organized Crime** : In 2008, we prosecuted **660** persons for triad society offences. Prosecutors made **21** applications for enhanced sentences for those convicted of offences under the Organized and Serious Crimes Ordinance.

Caseload

In 2008, there were **248,403** new prosecutions in the courts, as compared to **221,764** in 2007. In 2008, **15,356** advices were given in criminal cases, as compared to **14,404** advices in 2007.

In 2008, public prosecutors attended **729** court days in the Court of First Instance. That compared with **1,118** court days in 2007. In the District Court, the figures for 2008 and 2007, were, respectively, **773** and **755** court days. In the Magistrates Court, the figures for 2008 and 2007 were, respectively, **538** and **484** court days.

Our Court Prosecutors prosecuted a total of **195,510** cases in 2008 in the Magistrates Courts, involving **11,799** court days. That compared with **179,161** cases in 2007, involving **12,023** court days.

Conviction Rates

	<u>2007</u>	<u>2008</u>
Magistrates Court	76.6%	73.2%
District Court	90.5%	92.6%
Court of First Instance	93.4%	94.8%

Criminal Appeals

Court of Final Appeal (CFA)

The number of CFA and CFA-related criminal cases processed and conducted by the Prosecutions Division in 1997/2008 far exceeded the number that proceeded to the Privy Council prior to reunification. Thus :

From January 1986 to June 1997, (11½ years), there were **140** criminal cases from Hong Kong to the Privy Council.

In comparison :

Between July 1997 and December 2008 (11½ years), **1,061** CFA and CFA-related criminal cases were dealt with – an increase of **657.9%**.

Court of Appeal

	<u>2007</u>	<u>2008</u>
Total no. of appeals determined	552	541
- Dismissed	216 (39.1%)	232 (42.9%)
- Allowed [in whole or in part]	113 (20.5%)	117 (21.6%)
- Abandoned	223 (40.4%)	192 (35.5%)

Court of First Instance (Magistracy Appeals)

	<u>2007</u>	<u>2008</u>
Total no. of appeals concluded	1,192	1,117
- Dismissed	512 (43%)	550 (49.2%)
- Allowed [in whole or in part]	254 (21.3%)	245 (21.9%)
- Abandoned	426 (35.7%)	322 (28.9%)

Briefing Out Cases

In 2008, we briefed out **17** appeal cases to private lawyers to conduct on our behalf, which accounted for **1%** of the total.

In 2008, **40.5%** of trial cases were briefed out to private lawyers to prosecute on our behalf. The briefing out statistics were :

- (1) Court of First Instance : **53** cases were briefed out, accounting for **486** court days. This may be compared with **326** cases prosecuted by Public Prosecutors, and accounting for **729** court days. The percentage of cases briefed out to private lawyers was **14%**, and **40%** of court days;
- (2) District Court : **487** cases were briefed out, accounting for **3,316** court days. This may be compared with **869** cases prosecuted by Public Prosecutors, and accounting for **773** court days. The percentage of cases briefed out to private lawyers was **35.9%**, and **81.1%** of court days;
- (3) Magistrates Court : **430** cases were briefed out, accounting for **995** court days. This may be compared with **233** cases prosecuted by Public Prosecutors, and accounting for **538** court days. The percentage of cases briefed out to private lawyers was **64.9%**, and **64.9%** of court days.

Court Prosecutors

In 2008, the Court Prosecutors conducted the bulk of the cases tried in the courts of Hong Kong. Prosecuting apart, they also promoted the administration of justice in the seven magistrates courts. As dedicated para-legals, they liaised with judicial staff, victims of crime, fiat counsel, law enforcement personnel and defence lawyers. The success of criminal justice at the summary level was due in large measure to the Court Prosecutors, and I compliment them upon their outstanding contribution.

Of the **92** Court Prosecutors in practice in 2008, **44** held legal qualifications. Whereas **6** were admitted as barristers, 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 2008, **1** Court Prosecutor was studying for the PCLL, **1** was a trainee solicitor, and **2** were studying for law degrees.

The average cost per court day of prosecutions conducted by a Court Prosecutor of **\$3,030** compares favourably with the fees for counsel prosecuting on

general fiat of **\$5,430** per court day. If all the **11,799** court days conducted by Court Prosecutors in 2008 were to be briefed out to private counsel, it would cost about **\$64.07 million**, which is **79.2%**, or **\$28.32 million**, more than the **\$35.75 million** cost of the Court Prosecutors.

Chinese Language Programme

Throughout 2008, the Prosecutions Division pursued its programme to promote the use of the Chinese language in criminal proceedings. Of our **115** Public Prosecutors, **106** were bilingual in 2008, while all **92** of our Court Prosecutors were proficient in Chinese. We organised **3** 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 **1,805** terms. Our Bilingual Court Documents Unit translated **4,800** pages of English documents into Chinese, and **454** Chinese documents into English. The figures for the use of Chinese language in criminal proceedings in 2008 show :

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Court of Appeal	26.4%	27.4%	31.6%
Court of First Instance (Magistracy Appeals)	63.2%	71.4%	75.9%
Court of First Instance (Trials)	23.5%	24.7%	23.8%
District Court	37.1%	31.9%	47.8%
Magistrates Court	75.2%	83.6%	83.1%

Conclusion

The Prosecutions Division is committed to the highest standards of criminal justice at all levels. Internal operations require regular review, and reform is a priority. Public expectations are great, and organized crime is sophisticated and international. If global strategies to counter crime are to succeed, prosecutors in different places should exchange ideas and develop strategies in tandem. In all we do, close liaison with our criminal justice partners is crucial to our planning.

In conclusion, I thank the Secretary for Justice, Mr. Wong Yan Lung, for the advice and support he gave to the Division as it pursued its agenda in 2008.

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