Introduction
Director's Overview

For the Prosecutions Division, the year 2001 began on a high note. With our accession in January to the International Association of Prosecutors (IAP), a fresh chapter opened in the life of the Division. We used that new position throughout the year to project our thinking at the world level, and to forge closer links with our counterparts in other jurisdictions.

Liaison amongst prosecutors is vital. All are faced with new and more sophisticated types of crime. Cooperation must exist if there is to be any real hope of combating transnational and cross-border crime. Our views were sought by the IAP and others on the combat of money laundering, copyright crime, corruption and technology crime, and in all such areas, as well as in regard to traditional crime, we had much to contribute. At the same time we worked closely with law enforcers to devise more effective crime strategies and to develop better means of prosecuting offences at court.

2001 年伊始，便為刑事檢控科帶來新景象。我們在 1月加入國際檢察官聯合會(聯會)，為本科開啓了新的 一頁。年內，我們以這個新身份，在國際層面提出我 們的意見，並與其他司法管轄區的檢控人員建立緊密 聯繫。

檢控人員之間的交流非常重要：我們都要面對層出不 窮、犯案手法趨趨成熟的罪行。要成功打擊跨國和跨 境罪案，各方必須緊密合作。聯會和其他機關都就打 擊清洗黑錢、版權罪行、貪污和利用科技犯案等範疇 徵詢我們的意見，而我們在這些範疇以及傳統罪案問 題上也提供了不少意見。此外，我們與執法人員緊密 合作，制定更具成效的打擊罪案策略和改善在法院提 出檢控的方法。
Our mission throughout the year was a fundamental one. It was to provide a just and independent prosecution service. Offenders were firmly and fairly prosecuted. Advice was competently and impartially given. Prosecutorial values were asserted wherever necessary. We brooked no interference in our processes. At the same time we were frank and open about the way we did things, and how we operated. Transparency was an integral part of our work.

In 2001 we implemented a series of important criminal justice initiatives. A working group created a set of standard forms and precedents for use in criminal proceedings in the Court of Final Appeal. Another working group examined an expanded role for victim impact statements in trials. The most effective deployment of the enhanced sentencing provisions of the Organised and Serious Crimes Ordinance engaged a third working group. A yet further working group considered the ambit of the Superintendents’ discretionary warning scheme, as an alternative to prosecution for young and first time offenders. A Prosecution Manual was issued to assist prosecutors and law enforcers. We were proactive throughout the year on various fronts in our pursuit of an improved legal system.

Close ties with the legal profession were pursued as a priority in 2001 in furtherance of shared objectives. The integrated training programme with the Bar, which we initiated in 1998, assisted prosecutors and practitioners alike. All benefited after we agreed to place our Criminal Appeals Bulletin upon the departmental web site. We contributed to the Law Society’s Continuing Legal Education programme. A full role was played in the Criminal Court Users’ Committee, and also in other bodies concerned with legal reform and the treatment of victims of crime. We assisted the law faculties of both Hong Kong University and City University. Contacts at the social level with the profession were arranged periodically.
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Through the delivery of our performance pledges, the Division promoted a better service to the public in 2001. In this the timely processing of cases, regular liaison with all of those involved in the criminal process, and the making of proper disclosure of unused material all played a part. The effective deployment of Information Technology facilitated further the quality of the service we were able to provide. A culture of service to the community was encouraged at all levels.

Since the prosecutor must be sensitive to the needs of victims of crime, as well as to those of witnesses, prosecutors kept them fully abreast of the progress of cases. At court we protected their position, explained what was happening and provided comfort when necessary. In determining where the public interest lay, we gave full weight to the interests of the victim. We believe that public confidence is promoted if the needs of victims are placed at the centre of our calculations. The manner in which the system treats its victims is a measure not only of its efficacy, but also of its humanity.

In the quest for prosecutorial excellence, we took a long, hard look at the departmental prosecutor system. Having satisfied ourselves as to its utility, we set about improving it. Biannual policy strategy sessions were arranged with the Heads of the Departmental Prosecution Services. Specially designed training courses were organised. Liaison on the ground with Senior Court Prosecutors was encouraged. Prosecution publications, some specially-tailored, were provided. By all such methods we facilitated the operation of the departmental prosecutor system, which is of such value at the basic level.
Exchanges with legal officials from elsewhere in China featured prominently on our agenda in 2001. These contacts were valuable and they engendered a better understanding of the legal systems that co-exist in different parts of the country. We crystallised thinking in key areas of common interest to prosecutors and law enforcers, and all accepted that to be successful systems of criminal justice need to be underpinned by the rule of law.

The success of the Division in 2001 was achieved with the support of the Secretary for Justice, the Honourable Elsie Leung, JP. Her backing was as steadfast as it was comprehensive. The Secretary's endorsement of our international role, of our commitment to transparency and of our reforming initiatives was total. Her guidance and advice were available to me and my colleagues at all times. The Secretary encouraged us in all we did, and defended our position whenever necessary. The Division owes her a profound debt of gratitude.

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That Hong Kong is a secure and a decent society is in no sense accidental. It is due to the people of the SAR and to the values they espouse. It is recognised on all sides that Hong Kong is a safe place to live and to do business, that corruption is not tolerated, and that human rights are respected. Fundamental to all of this is a system of public prosecutions which is fair, open and independent.

The modern prosecuting authority must be rooted in the community it serves. Public trust is vital and, as a corollary, transparency by prosecutors is essential. Although traditional values must be applied, procedures have to be reviewed and, where necessary, modernised. Our standards as prosecutors require us to be firm with those who seek to interfere in the decision making process, and to be sensitive to the needs of those involved in the criminal justice system.

It must be to the good if the prosecutorial system can be explained and rationalised, without descending into detail in particular cases. Public prosecutors everywhere now recognise the importance to their role of transparency in dealings with the public. Transparency is very much an end in itself, as it helps to secure the position in society of the prosecuting authority. The Yearly Review of the Prosecutions Division was introduced in 1999 in order to explain our activities and achievements to the community at large, and the initiative has been acclaimed at all levels. The momentum which has developed since 1997 towards transparency is irreversible, and the days of prosecutorial secrecy are long since gone.
The modern prosecutor must act independently at all times. A proper line of demarcation is drawn between the prosecutorial and the investigative functions. Whereas law enforcers may investigate on the basis of reasonable suspicion, the threshold tests for prosecution are altogether different. Prosecution will only ensue if the quality of the evidence affords a reasonable prospect of conviction. It must also be in the public interest to prosecute, and few will dispute, for example, the utility of diversion as a means of disposal for young offenders wherever possible.

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Article 63 of the Basic Law provides that the Department of Justice shall control prosecutions, free from any interference. The principle of prosecutorial independence is central to the role of the prosecutor in society. We must take the decisions which, in the cold light of day, and on the application of our prosecution policy, we consider appropriate. Never must we allow our judgment in any particular case to be overborne by pressure or criticism from any quarter, no matter how great or how shrill.

Fairness requires the public prosecutor to protect the rights of the suspect, just as he safeguards those of the accused. All forms of extra-judicial trial are to be resisted. Issues of guilt or innocence are to be resolved in courts of law, not by public debate. When in May he addressed the Heads of Prosecution Agencies Conference (HOPAC), Mr Harry Macleod, Deputy Director of Public Prosecutions (DDPP), explained that the only ‘proper forum for the determination of issues of guilt or innocence of the crime is the court, where the suspect has the right to a fair trial in accordance with the rules of criminal justice.’ He added that ‘those suspected of crime have inalienable rights, whether prosecuted or not.’

The most significant and enduring of our prosecutorial values is fearlessness. The public prosecutor has daily to take decisions, both to prosecute and not to prosecute, which may be controversial. Whilst most prosecutions pass without comment, a handful attract attention and scrutiny. The prosecutor must always do that which is proper. He cannot allow his decisions to be influenced by criticism, whether actual or potential. When in April the DPP addressed the Law Association of Hong Kong University Students Union, he explained that ‘the rule of law is not about winning popularity contests, it is about doing what is right.’ Prosecutorial courage is an essential attribute.
In January, the DPP appeared before the Administration of Justice and Legal Services Panel of the Legislative Council to explain the decisions to terminate two high-profile prosecutions. In one, the prosecution of a senior civil servant for shop theft was stopped after it was shown that he was suffering from a psychiatric disorder at the time of the offence. In the other, the prosecution of a well-connected student for unlawful possession of two ecstasy tablets was terminated after independent legal advice indicated that the consequences of a conviction would be out of all proportion to the gravity of the offence. The DPP told the Panel that ‘it is often said, rightly, that no one is above the law. The corollary to that, however, must be that no one is beneath the law.’

The decision of whether or not to prosecute is a vital one. Vital for the community. Vital for the suspect. Vital for the victim. Great care must always be taken. The public prosecutor is well aware that a wrong decision to prosecute, as well as a wrong decision not to prosecute, has the potential to undermine public confidence. He should only take a decision after the evidence and the surrounding factors, including those which are favourable to the suspect, have been carefully evaluated.

It has never been the position that those suspected of criminal offences must automatically face prosecution. A charge is only appropriate if it is in the public interest. In determining where exactly the public interest may be said to lie, the public prosecutor examines all the factors and the circumstances. These vary from case to case, and no two cases are ever exactly the same. The more serious the offence, the more likely is it that the public interest will require a prosecution.

The public prosecutor exercises a discretion on behalf of the community of whether to initiate a prosecution and whether to pursue a prosecution which has begun. He does not operate as a rubber stamp. His task is to determine where the interests of public justice may truly be said to lie. It would be wrong to pursue every case, without regard to the justice of the situation.
Equality before the law does not require that every case be treated in exactly the same way. Regard must be had to the personal situation of the suspect, the circumstances of the case, the merits of the prosecution, and the attitude of the victim. Properly understood, equality before the law requires that prosecutors must not act arbitrarily in the discharge of their duties. That is why at all times our prosecutors operate within the parameters of the Prosecution Policy booklet, which the Department issued to the public in 1998. The intrusion of improper motives into the decision making process must be resisted at all costs.

After a media commentator suggested in March that there might be advantage in approaching prosecution issues from the political angle, the DPP responded that this could not be countenanced. In the South China Morning Post of 5 March 2001, in an article entitled ‘Prosecution process must never be used to satisfy political ends’, he explained that ‘the integrity of the prosecution process must never be compromised. That is why the suggested intrusion of political considerations or of expediency must be resisted at all costs. The rule of law requires no less than the application of proper legal criteria to the difficult decisions we have to take.’

At court, the public prosecutor represents the Hong Kong Special Administrative Region. He does not represent the government or any of the law enforcement agencies. The distinction is vital, and it is no part of the prosecutor’s function to seek a conviction at all costs. The interest of the prosecutor is no more than that the right person is convicted and that the truth be known.