Recent Developments and the Prosecution of Crime
Hong Kong has in place stringent laws to facilitate the prosecution of money launderers and the recovery of the proceeds of crime. Money laundering is an insidious offence. On one level, illicit assets represent the end result of organised crime. On another, they are the means by which new stages of organised crime can be funded.

The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) was enacted in 1989, and created the offence of laundering the proceeds of drug trafficking. The Organised and Serious Crimes Ordinance (OSCO) was enacted in 1994, and created a money laundering offence relating to the proceeds of an indictable offence. Each Ordinance provides for the restraint and confiscation of the proceeds of crime.

Section 11 comprises the five prosecutors who advise law enforcers on money laundering investigations. They seek restraint and confiscation orders and work with accountants to realise property. Their goal is the disruption of the operations of organised crime. When in November he addressed the Regional Conference of Attorneys-General of Countries in Asia and Europe, the DPP emphasised that ‘the confiscation of the proceeds of crime is an integral part of the function of today’s prosecutors and investigators, and in the fight against money laundering we must be determined and resolute and prepared to play a long game. Our societies expect no less of us.’
Recent Developments and the Prosecution of Crime

During the year, 38 people were charged with offences under OSCO and $5.18 million in crime proceeds was ordered to be confiscated. A further $894.14 million was restrained pending court proceedings. Under the DTROP, $11.43 million in drugs proceeds was ordered to be confiscated and $4.08 million restrained. Our strategy of seizure recognised that it is easier for the criminals to replace apprehended offenders than it is to replace millions of dollars of seized assets.

Close liaison throughout the year was maintained with Mainland authorities and overseas law enforcement agencies in the combat of international money laundering. In October, a cross-border money laundering operation in which funds stolen from a bank in Guangdong Province were laundered through local accounts was cracked. Suspects were arrested and a record $800 million was restrained.

Money laundering is an offence which requires cooperation at all levels. State and regional anti-money laundering laws do not of themselves suffice. When in November he addressed the Regional Symposium on the Prevention and Control of Money Laundering, Mr Michael Blanchflower, SC, SADPP, emphasised that 'there must be support and assistance from other sectors of the community, importantly, banks and the financial institutions, including deposit taking companies, brokerages, insurance companies, remittance agents, bureaux de change, and money changers. All are used by money launderers.'

All were conscious in 2001 that Hong Kong had a role to play in the global counter-terrorism offensive. As a financial centre Hong Kong must not be used as a channel for terrorist finance. Prosecutors framed their advices to policy makers accordingly.
The Basic Law of the HKSAR provides the framework within which our legal system functions. As a constitutional instrument it is of direct relevance to the role of the prosecutor. Through its application to our work the Basic Law facilitates our commitment to uphold the rule of law. Article 87 guarantees the most fundamental right of the accused, the right to a fair trial. No trial can be fair if the prosecutor does not conduct himself professionally, or if he does not make full and proper disclosure to the defence of unused material.

Article 63 provides that the Department of Justice shall control prosecutions, free from any interference. That the notion of prosecutorial independence enjoys an entrenched status enabled prosecutors in 2001 to define their role in society within secure parameters. The duty of the prosecutor throughout the year was to apply the Basic Law through the advices that were given to law enforcement agencies and others in government, and to apply it to cases at court in a clear and principled way.

The equality provision in Article 25 was invoked by the accused in HKSAR v Pun Ganga Chandra and Others ([2001] 2 HKC 192), and the Court of Appeal concluded that the 'grievous bodily harm' rule, by which a person can be guilty of murder even if he did not intend to kill the victim, was not in violation of it, as the rule applied to all Hong Kong residents. The Court further decided that the 'secondary offender' rule was not arbitrary simply because a lesser form of liability was required of a secondary party than of a primary offender. The rule,
which represented a respectable view of what the law of murder should embrace, even if it resulted in a different mens rea being required for primary and secondary offenders, did not infringe Article 28 of the Basic Law, which contains a guarantee against arbitrary detention or imprisonment.

Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong shall remain in force. This was invoked in HKSAR v Shum Kwok-sher ([2001] 3 HKLRD 399), to challenge the validity of the common law offence of misconduct in public office. The accused contended that the offence violated Articles 9 (the right to liberty and security of the person) and 26 (equality before the law) of the ICCPR, as it was wide and vague, and discriminated against persons who were public officers. The Court of Appeal concluded that the offence was legitimate, and that it was well defined.

Prosecutors actively promoted the Basic Law in 2001. Section 7 (Basic Law and Bill of Rights) counsel conducted seminars for law enforcers on the effect of rights guarantees in the area of prosecutorial responsibility. They held in-house workshops on the Basic Law for prosecutors. They participated in the Asia Pacific Regional Forum on the Role of Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights. Through all such means awareness of the provisions and impact of the Basic Law was enhanced, as were the skills of prosecutors and their knowledge of the rights that are engaged in criminal proceedings.
Recent Developments and the Prosecution of Crime

The expansion of the Internet and e-commerce has gone in tandem with an increase in technology related crime. The problem is complex and transnational. Prosecuting authorities everywhere must respond appropriately by creating dedicated technology crime units, and these should assist one another. For its part, the Division took the initiative at an early stage.

Since its inception in 1999, the Computer Crime Team (CCT), operating within the legislative structure provided by the Computer Crime Ordinance of 1993, has contributed decisively to strategies to combat high-tech crime. The team of five prosecutors, headed by Mr Richard Turnbull, SADPP, Prosecution Policy Coordinator on Computer Crime, operates at four distinct levels. It liaises at the international level with those involved in the combat of cyber crime. It advises government on the viability of new prosecutorial and evidential options. It guides the investigations of the technology crime teams of the Police, the Independent Commission Against Corruption (ICAC) and the Customs and Excise. It presents cases of computer crime to the courts.
Recent Developments and the Prosecution of Crime

The Hong Kong Productivity Council Survey of 2001 revealed an increase of 13.4% in the number of personal computers affected by computer attacks. In 2001 there were 334 reported cases of every type of computer crime. Online fraud cases alone rose by 20%. The CCT handled cases which involved hacking, copyright infringement, unlawful gambling, publishing obscene articles, fraud and theft. Some offences were novel to prosecutors.

The CCT, in the first case of its type, prosecuted an offender who stole money through the Internet banking system (ESCC 1512 of 2001). It also prosecuted Hong Kong’s first instance of cyber stalking, in which the offender used his computer to threaten his victims with rape (DCCC 1163 of 2000). The policeman who hacked into restricted databases when searching for information about his lover’s former husband was also prosecuted (ESCC 2034 of 2001). Such cases were new to the courts, and the CCT deployed its latest techniques to bring them to a successful conclusion.

As patterns of technological crime evolve, the efficacy of legislation and of techniques to combat it require regular review. The Policy Coordinator joined the Security Bureau’s Task Force on Computer Crime, which is taking forward proposals to strengthen Hong Kong’s technology crime laws, to establish guidelines for Internet Service Providers, and to prepare standard procedures for handling computer evidence. He also represented Asia on the initiative of the International Association of Prosecutors to combat cyber crime by producing the ‘Guide to Conducting Internet Investigations’. 

最新發展和檢控罪行工作  Recent Developments and the Prosecution of Crime

據2001年香港生產力促進局調查的結果顯示，年內因個人電腦被入侵而受影響的個案增加了13.4%。2001年，各類電腦罪行的舉報案件有334宗。單是網上進行的欺詐案件已上升了20%。電腦罪行小組所處理的案件包括非法進入他人電腦、侵犯版權、非法賭博、發布淫穢物品、欺詐和盜竊，其中有些罪行對檢控人員來說是前所未見的。

電腦罪行小組檢控了一名透過網上銀行系統偷錢的罪犯（東區裁判法院刑事案件2001年第1512號），這是同類檢控案件的首宗。小組又檢控了本港首宗電腦網絡詐騙案，案中罪犯利用電腦恐嚇要強姦受害人（區院刑事案件2000年第1163號）。另有一名警員在網上搜尋其情人前夫的資料時非法進入受限制的資料庫內，因而被檢控（東區裁判法院刑事案件2001年第2034號）。 OnDestroying these cases, 法院從未處理過，均由電腦罪行小組運用最新科技把涉案罪犯繩之於法。

由於科技罪行的模式不斷演變，政府必須定期檢討打擊這類罪行的法例和對策的成效。政策協調員已加入保案局轄下的電腦罪行工作小組。該小組現正研究有關建議，加強香港的科技罪行法例及為互聯網服務供應商制定指引，並擬定處理電腦罪證的標準程序。此外，在國際檢控官聯合會所推動的打擊電腦網絡罪行計劃中，政策協調員擔任亞洲區代表，並編制了《互聯網檢控工作指引》。
In 2001, the CCT involved itself in both international and local exchanges and training programmes. The Policy Coordinator addressed the First Asia Cyber Crime Summit, in Hong Kong, as well as the LawAsia Conference, in New Zealand. The CCT joined training courses organised by the Hong Kong University of Science and Technology, as well as those organised by the Federal Bureau of Investigation, in America, and by Cyberspace International, in Canada. CCT prosecutors worked closely with the Information Security and Forensics Society to promote community understanding of computer forensics in Hong Kong, and to coordinate computer activity locally and elsewhere. Mr Hayson Tse, Government Counsel (GC), obtained the Postgraduate Certificate in Information Technology of the Open University of Hong Kong. By all such means, the CCT kept itself abreast of the latest technological developments.

Cyber crime is one of the most significant issues confronting prosecutors and law enforcers. The CCT was therefore heavily engaged throughout 2001 in identifying the way forward at all levels, as well as in conducting prosecutions. It faces significant challenges in 2002.
The disregard of intellectual property rights poses a serious challenge to law enforcers in Hong Kong and elsewhere. The potential financial loss to copyright owners is massive. Decisive action has accordingly been taken in Hong Kong in recent years at the legislative level, with new laws, at the enforcement level, with greater stringency, and at the court level, with effective prosecutions and realistic sentencing. The strategy has been effective.

Mr Richard Turnbull, SADPP, was appointed in 1998 as Prosecution Policy Coordinator on Intellectual Property. His team of five specialist counsel advises the Customs and Excise Department on cases of copyright infringement and false trade description, and conducts the prosecutions which result. After the enactment of the Copyright Ordinance in 1997, the team has vigorously enforced its provisions.

In 1998, 1,727 cases were prosecuted for offences contrary to the Copyright Ordinance, and 496 persons were imprisoned. In 1999, there were 1,310 such cases prosecuted, and 641 persons were imprisoned. In 2000, 3,938 cases were prosecuted, and 2,089 persons were imprisoned. In 2001, 1,627 cases were prosecuted, and 833 persons were imprisoned.

After the Policy Coordinator invited the Court of Appeal to address the issue of sentencing, it observed that offences under both the Copyright Ordinance and the Trade Descriptions Ordinance were becoming prevalent. This had damaged the reputation of Hong Kong. The Court indicated that whereas fines might have been adequate punishment in the past, more severe penalties were required for the future. Deterrent penalties should be imposed.
When in October the Policy Coordinator addressed the Greater China Intellectual Property Protection Symposium, in Beijing, he said that drastic, even draconian laws had been introduced in Hong Kong to prevent the abuse of intellectual property rights. He explained that these reflected our 'resolve to protect the rights of the proprietors of intellectual property. But more than that, they also indicate our determination to meet our international obligations and to protect the integrity of our economy.'

Hong Kong's work to counter the trade in counterfeit goods has not gone unnoticed. The International Federation of the Phonographic Industry, in its recent Piracy Report, acknowledged our determination to combat copyright piracy by adopting legislation which treats piracy as a serious organised crime, liable to the enhanced sentencing provisions of the Organised and Serious Crimes Ordinance, and by giving the authorities and the courts greater powers to tackle and to deter the problem. That the United States of America indicated that Hong Kong would stay off the 'watch list' of places where copyright infringement is a serious problem was a welcome bonus.

In the Policy Address in October, it was announced that the Division would enhance the capacity of its existing specialist team to prosecute intellectual property cases in 2001-2002. That will be achieved through re-deployment, training and liaison with prosecutors elsewhere. The team is committed to the yet more effective prosecution of copyright piracy in Hong Kong.
Hong Kong has in place a vigorous anti-corruption regime. The ICAC enforces the anti-corruption laws, and works closely with the Division and its prosecutors. In 2001, there were 4,476 reported cases of corruption, and 245 reports of electoral misconduct. The consent of the Secretary for Justice is required for the institution of proceedings under the Prevention of Bribery Ordinance.

Corruption is insidious and pervasive, and often transnational. Its effective prosecution safeguards the integrity of the civil service and promotes a clean business environment. Two Sections in the Division, comprising eleven prosecutors, therefore concentrate exclusively upon the prosecution of corruption offences. These prosecutors possess high levels of expertise, and they draw heavily upon the Manual on the Anti-Corruption Law of the HKSAR, which we updated in 2001 to assist both prosecutors and ICAC personnel.

The five prosecutors in Section 15 (public sector corruption), handle not only cases of civil service graft, but also offences involving scheduled public bodies. The Section also processes electoral misconduct cases arising under the Elections (Corrupt and Illegal Conduct) Ordinance. Recourse is sometimes had to the common law offence of misconduct in public office where public officers engage in conduct which is corrupt in the broadest sense, albeit that no actual bribery has occurred. In 2001, Section 15 prosecuted 198 persons and gave 384 written advices to the ICAC.
第16组(私營機構貪污案件)有六名檢控人員，他們熟悉各類商業罪行，該組的職責範圍十分廣泛，處理複雜和重大的詐騙活動(包括信用卡、按揭和信用卡的詐騙案)。由於貪污、貪淫以至非法賭博等形形色色的罪行都可能涉及貪污，因此第16組的人員必須充分了解犯罪活動的各個方面。2001年，第16組檢控了337人，並向廉政公署提供了437項書面法律指引。

2001年，第15組和16組檢控的案件，有些十分矚目。房屋署多名建築師涉嫌接受公共房屋計劃承建商以娛樂和膳食方式提供的利益，被判處監禁(區院刑事案件2000年第1016號)。一名政府產業經理建議把總值一億五千七百萬元的合約批予一間由其親戚管轄的公司，被控為公共人員行為不當，罪名成立，被判處監禁9個月，經覆核後刑期加長至30個月(覆核申請2001年第1號)。獲多利投資公司前行政總裁被指因向佳寧集團提供貸款優惠而獲陳松青給予四百五十萬元，原已被判入獄，但終審法院其後確認法官在審訊時給予錯誤的司法指引，結果該名行政總裁獲判無罪釋放(終院刑事上訴2001年第3號)。一名前立法會議員為推廣其公開業務而以僱傭私，被控為公共人員行為不當，接受利益，竊竊和僱傭帳目，罪名成立，被判處監禁(區院刑事案件2001年第524號)。

The six prosecutors in Section 16 (private sector corruption), are familiar with all types of white collar crime. The portfolio of the Section is broad and involves complex and substantial fraud, including letters of credit, mortgages and credit cards. As corruption can permeate all types of crime, from narcotics to vice to unlawful gambling, a comprehensive understanding of all facets of criminal activity is essential for Section 16 members. In 2001, Section 16 prosecuted 337 persons, and gave 437 written advices to the ICAC.

Cases prosecuted by Sections 15 and 16 in 2001 often attracted attention. Imprisonment awaited the Housing Department architects who conspired to accept advantages in the form of entertainment and meals from contractors working on public housing projects (DCCC 1016 of 2000). The government property manager who recommended that contracts worth $157 million be awarded to a firm controlled by relatives saw his prison term for misconduct in public office increased on review from 9 to 30 months (AR 1 of 2001). A former managing director of Wardley Limited, imprisoned for allegedly accepting $4.5 million from George Tan, for showing favour to the Carrian Group for loan facilities, walked free after the Court of Final Appeal identified judicial misdirection at trial (FACC 3 of 2001). The ex-legislator who abused his official position to further his public relations business was imprisoned for offences of misconduct in public office, accepting an advantage, theft and false accounting (DCCC 524 of 2001).
Since corruption is a global phenomenon, Sections 15 and 16 liaised closely in 2001 with those who prosecute graft elsewhere. They were involved with the International Anti-Corruption Council, the International Association of Prosecutors, Transparency International as well as with governmental agencies. The need to develop effective anti-corruption strategies between the private sector and government was treated as imperative by both Sections. It is through the effective prosecution of corruption that the way of life of the people of Hong Kong will be protected.
Recent Developments and the Prosecution of Crime

The Dangerous Drugs Ordinance was deployed in 2001 to prosecute manufacturers, distributors and possessors of dangerous drugs. In the Court of First Instance and the District Court, 515 people were prosecuted for the more serious narcotics offences. Those convicted on indictment of unlawful trafficking and manufacturing faced life imprisonment, and substantial terms of imprisonment of up to 30 years were not uncommon for those who dealt in dangerous drugs.

The Central Registry of Drug Abuse (CRDA) recorded an increase in the abuse of psychotropic drugs by young people in the first half of 2001. Of the 11,839 drug abusers identified by the CRDA, 22% were aged below 21 years. Although the drug most widely used by abusers was heroin, the most prevalent drugs in 2001 for those aged under 21 years were ecstasy, ketamine and cannabis. Whereas 208,473 ecstasy tablets were seized by Police and Customs, seizures of ketamine and cannabis rose, respectively, to 88 kg and 2,337 kg. Prosecutors had little choice but to deal firmly with all such offences.

There was public concern in 2001 over the use of ‘designer drugs’ by young people. Since 1992, those convicted of unlawful possession of dangerous drugs have been liable to 7 years’ imprisonment. When the DPP addressed the Administration of Justice and Legal Services Panel of the Legislative Council on 16 January 2001, he emphasised that 'those found in possession of dangerous drugs must normally expect to be prosecuted.’ He indicated that whereas 19,353 prosecutions for unlawful possession of dangerous drugs had been instituted in the previous three years, in only twenty cases had it been deemed appropriate to enter into binding over arrangements as an alternative to prosecution. The scope for leniency was of necessity limited.
Recent Developments and the Prosecution of Crime

At their biannual meeting in February 2001, the DPP and the Director of Crime and Security recognised the need for deterrent sentencing to combat the increase in psychotropic drugs. Existing guidelines for ecstasy were dated, and there were no guidelines for ketamine, recently categorised as a dangerous drug. Prosecutors and police therefore liaised closely throughout the year to ensure that courts were made fully aware of the dimensions of the problem. Reviews of sentence deemed to be unduly lenient were initiated in 12 cases in the Magistrates' Courts.

On 26 October 2001, two accused were convicted of conspiring to traffic in a record 60,167 tablets of ecstasy, with a street value of up to HK$21 million (HCCC 62 of 2001). They imported the tablets by air from Indonesia inside water heaters. Having considered prosecution material as to the quality and effect of the drug and its prevalence, the Court of First Instance sentenced the accused to terms of imprisonment of, respectively, 17½ years and 13 years. Deterrence was the prime consideration.

In 2000/2001, the United States of America decided to remove Hong Kong from its list of ‘major drug transit countries/entities’. Many in Hong Kong worked to achieve this, including Mr Darryl Saw, SC, DDPP, Prosecution Policy Coordinator on Narcotics, who visited the United States to make the case for removal. His efforts were acknowledged by the Secretary for Security.

An invidious aspect of the illicit trade in drugs is the use it makes of young persons. Section 56a of the Dangerous Drugs Ordinance enables a court to enhance the sentence of an adult who involves a minor in a specified drug offence. In an adult who involvement in a specified drug offence in the Court of First Instance, the court increased the prison term imposed upon an adult who trafficked in 19 kilogrammes of heroin and who involved a 16-year-old courier in the offence (HCCC 151 of 2001).

2001年10月26日，两名被告被控串谋贩运60,167粒 ecstasy片，一名被告判监17½年，另一名被告判监13年。法庭考虑了有关药物的质量和影响，以及该药物在社会上的流通情况，作出上述判决，以达成威慑的目的是首要考虑。

2000至2001年度，美国决定将香港从“主要洗黑钱国家/地区”名单中除名，香港亦有众多人士努力争取，其中包括刑事检控专员兼毒品事务协调员马先生，他曾访问美国，争取取消香港的“主要洗黑钱国家/地区”地位。他的努力最终获香港保安局局长承认。

一名涉及未成年人的案件中，法庭向一名涉及贩运29公斤海洛因的成年人判监19年。

尽管香港的毒品种类繁多，但其分销网络的组织性日益增强，令香港成为毒品分销的重要据点。因此，反洗黑钱的工作必须得力。
Recent Developments and the Prosecution of Crime

Victims of Crime and Vulnerable Witnesses

If those who commit offences are to be prosecuted, victims and witnesses must be willing to report offences and to testify at court. They need to know that they will be treated with respect and understanding. Prosecutors therefore upheld the rights and interests of victims and witnesses, as well as their relatives in 2001.

Victim of Crime Charter

Throughout the year, prosecutors strictly applied Charter principles at each stage of the criminal process. Victims were kept abreast of decisions taken. Consultation was encouraged. Legal constraints permitting, reasons for decisions to prosecute or not to prosecute were supplied.

At court, prosecutors explained their role to victims. When delays arose, victims were alerted. To the extent that this was possible, prosecutors apprised courts of the circumstances and views of victims. It was vital that the interests of the victim did not go by default.

When victims queried prosecutorial decisions, or sought clarification of matters raised in the letter notifying them of the decision, staff responded with courtesy and sensitivity. In 2001 a total of 293 letters were written to victims; 80 chose to respond by telephone or in writing, and, in consequence, 74 replies were provided to victims.

In 2001 prosecutors, in the first such case, with a view to enhanced sentencing, invoked section 27 of the Organised and Serious Crimes Ordinance to apprise the Court of First Instance of the impact on the parents of the killing of their son by an accused convicted of manslaughter (HCCC 144 of 2000). Although the judge declined to receive the evidence, a working group settled internal guidelines for prosecutors to deploy in the application of the enhanced sentencing provisions.
Guidance was also issued on the use of victim impact statements. The objective was to ensure that, wherever possible, the effects of crime upon victims and their families were fully understood by those who sentenced offenders. Although this issue depended ultimately on the exercise of judicial discretion, prosecutors were committed, to the extent permitted by law, to ensuring that the voices of those affected by crime were heard by courts in Hong Kong.

Vulnerable Witness Team (VWT)
The VWT comprised 16 prosecutors in 2001. Throughout the year they advised on cases involving the most vulnerable of witnesses, and conducted related prosecutions. The VWT applied the legislation which provides for the video recording of evidence and the use of live TV links in respect of certain categories of witness. These include children, the mentally handicapped and witnesses in fear. Such techniques were deployed in cases which involved sexual and physical abuse and cruelty.

In 2001, the VWT lectured prosecutors, social workers and non-governmental organisations on the most effective and humane methods of handling vulnerable witnesses at trial and pre-trial. Organisations assisted by the VWT included Against Child Abuse, the Association Concerning Sexual Violence Against Women and Rain Lily, its crisis centre, and the Working Group on the Victim Support Scheme. Team members also joined the Working Group on Combating Violence, which superseded the Battered Spouse and Sexual Violence Working Groups.
In August, a manslaughter prosecution involving 'Shaken baby syndrome' was terminated after the VWT accepted the latest research which indicated that traditional thinking on causation was not always valid (HCCC 309 of 2000). Injury to the infant could be caused accidentally in the cranio-cervical junction, and that, in turn, could cause a loss of the breathing mechanism and brain swelling which could lead to a sub-dural haematoma. Pathologists are now required not only to exclude the possibility of accident, but to look for injuries indicative of excessive gripping and shaking. The VWT pledged itself to apply the latest medical findings on 'Shaken baby syndrome' in the decision making process, and to monitor developments in liaison with pathologists and investigators.

At the seminar of the Royal Institute of Public Administration in London in January, VWT members examined the role of children in the criminal justice system. At the Indo-Pacific Congress on Legal Medicine and Forensic Sciences in Melbourne in September, they considered the investigation of sexual abuse. At the Asia-Europe Law Enforcement Agencies Meeting in Guangzhou in November, child welfare was discussed, including people smuggling and the impact of terrorism on the most vulnerable.