

刑事檢控專員的序言

DIRECTOR'S OVERVIEW

2017 年，刑事檢控科肯定是經歷空前挑戰，同時又取得豐碩成果。

前刑事檢控專員楊家雄資深大律師領導本科四年，並於 2017 年 9 月離任。譚耀豪資深大律師、許紹鼎資深大律師和我輪流署任刑事檢控專員，確保本科持續運作。本科同事年內勤勉不懈，我只略盡綿力，本篇序言特別表彰本科上下共同努力的工作成果。

2017 was certainly a year of unprecedented challenge and achievement.

The former Director, Mr. Keith Yeung SC, led the Division for 4 years and left us in September 2017. Mr. William Tam SC, Mr. Martin Hui SC and I rotated as acting DPP to keep the Division running. This overview is thus written in recognition of the totality of the hard work done by all colleagues in the Division – least by me.



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刑事檢控專員
Director of Public Prosecutions

2017 年最後一個工作天，我就任刑事檢控專員。當時我訂立目標，期望本科律師能夠在法庭檢控工作上汲取更多經驗，並進一步發展及豐富訟辯技巧。我將會在下一年的工作回顧中匯報有關進展。

如我所言，2017 年是充滿挑戰的一年。本科檢控人員年內處理超過 3,300 宗案件，較 2016 年的 3,719 宗稍微下跌。這是由於本科提供的法律指引數字有增無減，所牽涉的案情及法律爭議亦愈見繁複，因而令法律指引方面的工作量有所增加。本科於 2017 年提供了 13,790 項法律指引，較 2016 年的 13,462 項上升 2.44%。

多宗源於佔領中環行動及 2016 年 2 月於旺角發生的暴亂事件的案件均在 2017 年審結。一如其他案件的處理手法，負責這些案件的檢控人員純粹基於所取得的證據及《檢控守則》的原則決定是否提出檢控，如提出檢控，又決定控以什麼合適的控罪，箇中絕無其他因素左右。雖然常有批評指這些檢控出於政治動機，但未曾有人就這些案件申請永久終止聆訊，令人欣慰。

同樣地，檢控人員只會在非常罕有的情況下申請判刑覆核。《檢控守則》第 22.8 段述明，“在特殊情況下，律政司司長可基於判刑在法律上或原則上出錯，或判刑明顯過輕或過重，向法庭申請覆核判刑”。有關數據證明我們緊守這項嚴格原則。2017 年，有九宗判刑覆核的申請根據香港法例第 221 章《刑事程序條例》第 81A 條進行聆訊，當中涉及誤殺、危險駕駛導致他人死亡、猥褻侵犯、管有兒童色情物品、非法集結、企圖強行進入、入屋犯法罪及洗錢罪行。以上所述，再一次證明任何說法指控判刑覆核出於政治動機，並無事實根據。

在備受爭議的案件中，檢控人員繼續遭受言論攻擊。檢控人員固然並非可免受批評，但他們個人及家人絕對不應該成為受害人，受到無的放矢的謾罵攻擊。檢控人員肩負刑事檢控工作非為個人利益，而是代公眾擔當“秉行公義者”的角色，所以是“公職檢控人員”（根據英文職銜“Public Prosecutor”意譯）。

現時另一趨勢亦同樣令人憂慮：但凡案件涉及政治背景，如裁決未如某些公眾人士預期，他們便肆意攻擊主審法官。固然，公開及理智地討論判決理據是健康的做法，能有利於司法工作的恰當執行，但對主審法官作出人身攻擊（有一次甚至是涉及死亡恐嚇），實是超出言論自由的界線，更有可能招致刑責或構成藐視法庭。公眾應對香港司法制度及司法人員抱有信心，避免對法官作出毫無事實基礎的攻擊。

On my assumption of office on the last working day of 2017, I made it a goal for Counsel in the Division to gain more exposure in court work and to further develop and enrich their advocacy expertise. I will report on the progress in the next Yearly Review.

I said 2017 was a year of challenge. Over 3,300 cases were conducted by prosecutors within the Division, a slight decrease from 3,719 in 2016. This was due to increasing workload on the advisory aspect, resulting from a rise in the number of legal advices rendered and the increasing complexity of the factual and legal issues involved: 13,790 in 2017, an increase of 2.44% when compared to 13,462 in 2016.

2017 saw the conclusion of trials of a number of cases emanating from the Occupy Central Movement and the riotous incidents that took place in February 2016 in Mongkok. Prosecutors conducting these cases, as indeed in any other case, considered the decision of whether to prosecute and if so, the appropriate charge(s) purely on the available evidence and the principles set out in the Prosecution Code – nothing else. Criticisms that these prosecutions were politically motivated are frequently made, although it is comforting to note that no application for permanent stay of proceedings has ever been made in these cases.

Similarly, prosecutors only conduct review of sentences in the rarest of cases. Paragraph 22.8 of the Prosecution Code reads “The Secretary for Justice may apply to the court in exceptional cases for the review of a sentence on the basis that it has proceeded on an error of law or of principle or that it is manifestly inadequate or excessive”. The figures supported this stringent approach. In 2017, 9 applications for review of sentence under section 81A of the Criminal Procedure Ordinance, Cap 221 were heard involving offences of manslaughter, dangerous driving causing death, indecent assault, possession of child pornography, unlawful assembly, attempt forcible entry, burglary and money laundering. Again, any suggestions that the review of sentences are politically motivated are unsubstantiated.

Verbal abuses on prosecutors in controversial cases continue. While prosecutors are not immune from criticisms, they and their family members should not become victims of such unwarranted abuses. Prosecutors conduct criminal prosecutions not because of their personal interests. They do so on behalf of the public as ministers of justice – hence the title “Public Prosecutor”.

There is another similarly alarming trend. In cases with political background, some members of the public have lodged attacks on the presiding judges when the outcome of the cases do not tally with their expectation. While open and rational discussions of the reasons of the judgment are healthy and conducive to the proper administration of justice, personal attacks on presiding judges (and in one instance, death threats) exceed the bounds of freedom of expression and may attract criminal liability or amount to contempt of court. The public should have confidence in the judicial system and judicial officers of Hong Kong and refrain from lodging baseless attacks on judges.

So much for the challenges. I now turn to some of the important achievements which we have made in 2017.

有關挑戰的部分到此為止。以下分享我們於 2017 年取得的一些重要成果。

第一，為了提升裁判法院檢控案件的質素，作為先導計劃，兩名高級檢控官分別調派至東區及西九龍裁判法院，以強化檢控服務。他們就裁判法院案件迅速提供即時意見，以及在有需要時出席緊急聆訊。另外，為達至更加合理分派裁判法院案件，我們擬訂“表列職務”清單，更好地區分檢控官 / 外判律師及法庭檢控主任各別負責的案件。此外，相隔 9 年，我們亦重新招聘法庭檢控主任。法庭檢控主任在裁判法院維持高水平檢控工作，至為關鍵。這次新聘的法庭檢控主任能夠為法庭檢控主任團隊帶來新血，對於裁判法院檢控團隊的有效運作至為重要，我對此尤感欣慰。

第二，律政司聯同大律師公會及香港律師會於 5 月合辦 2017 年刑事法律研討會。這次是自 2012 年首屆以來的第四屆研討會。我們非常榮幸邀得新西蘭最高法院法官 William Young 爵士和英格蘭及威爾斯的刑法和證據法律專員御用大律師 David Ormerod 教授擔任特別嘉賓。對於在庭上保護易受傷害人士、有關共同犯罪的法律，以及量刑慣例的最新發展等法律專題，與會人士盡抒己見，展開透徹的辯論。

第三，身為“秉行公義者”，為履行部分職責，我們繼續舉辦檢控週及與“公眾會面計劃”，以加深公眾（尤其是年輕一代）對香港法律制度及相關法律專題的認識。

除了專業工作，我們亦有輕鬆一面。我們盡心工作，亦盡情（或更盡情！）玩樂。“凝聚一心”一節的相片猶勝千言萬語。

在我下筆之時，2018 年已過大半。我們繼續面對重重挑戰，部分更是極其艱巨，但我們依舊團結一致，克盡厥職，致力履行檢控職責，維持司法公義。我們會精益求精，力臻完善。

正如我在上文提到，所有成果均是全體檢控官及法庭檢控主任在行政人員襄助下共同努力所得。我衷心感謝他們每一位專心致志，篤行不倦。

最後，不得不提前律政司司長袁國強資深大律師和前任刑事檢控專員楊家雄資深大律師（在此我誠邀各位閱讀楊先生在“特稿”的文章），全賴兩位鼎力支持，領導有方，我們才得以於 2017 取得佳績。如略去不提，實有欠公允。

Firstly, to enhance the quality of the prosecution of cases in the Magistrates' Courts, as a pilot scheme, two Senior Public Prosecutors were deployed to the Eastern and West Kowloon Magistrates' Courts respectively to strengthen the prosecution services. They provide immediate and prompt input to cases at the Magistrates' Court and attend urgent hearings should the circumstances warrant. Furthermore, with a view to rationalizing the assignment of cases, a list of "Scheduled Duties" has been drawn up to better delineate the cases to be conducted by the Public Prosecutors/Fiat counsel and court prosecutors. Furthermore, after a lapse of 9 years, a fresh round of recruitment exercise for Court Prosecutors has recommenced. Court Prosecutors are pivotal in maintaining the high prosecution standard in the Magistrates' Court. I am glad that this round of new recruits has brought in fresh blood to the team of Court Prosecutors which is essential for the effective operation of the prosecution team in the Magistracies.

Secondly, the DoJ, together with the Bar Association and the Law Society, jointly hosted the Criminal Law Conference 2017 in May. This is the fourth conference since the first one held in 2012. We were honoured to have the Honourable Justice William Young of the Supreme Court of New Zealand and Professor David Ormerod QC, the Law Commissioner for Criminal Law and Evidence, England and Wales as our special guests. Topical issues including protecting the vulnerable in court, the law regarding joint enterprise and recent developments of sentencing practice were fully discussed and debated.

Thirdly, as part of our responsibilities as ministers of justice, we continue to hold the Prosecution Week and the "Meet the Community" Programme, with a view to enhance awareness of the public, in particular amongst the younger generation, in the legal system of Hong Kong and topical legal issues.

Apart from our professional work, we do have a light side - we work hard and play hard (or harder!). I cannot do better with words except to invite you to view the photos in the "Bonding" section.

A large part of 2018 has passed when I write this overview. We continue to face challenges, some immensely difficult. We will continue to work together as a strong team in the discharge of our prosecutorial responsibilities and to maintain the proper administration of justice. We will look for areas for improvement and strive to perform better.

As I have said earlier, all the achievements are the totality of the work of the Public and Court Prosecutors, together with the strong support of our administrative staff. I thank each and every one of them for their hard and dedicated work.

Lastly, it will not do justice if I do not mention the unfailing support and leadership of the former Secretary for Justice, Mr. Rimsky Yuen SC and my predecessor, Mr. Keith Yeung SC (in this regard I invite you to read Mr Yeung's article in the "Feature Articles" section), without which the achievements in 2017 would not have been possible.