

A YEAR TO THE DAY

The Director of Public Prosecutions describes the programmes of the Prosecutions Division of the Department of Justice upon the anniversary of his appointment

15 October 1998

INTRODUCTION

It is exactly a year since I took office. At that time I indicated to you my vision for the development of the prosecution service of the HKSAR. I advised you of the importance I attached to providing the community with an effective, independent and just prosecution service. I was also aware at that time that laudable sentiments would count for nothing if they did not go hand in hand with concrete initiatives. It was for that reason that I launched a programme of renewal, reform and modernisation of the Prosecutions Division. It is only right that on the anniversary of my appointment I should report back to you upon what we have done, and indicate where we are going.

A year ago, I emphasised to you the importance I attach to five things:

- (A) Professional standards for prosecutors;
- (B) Proper training for prosecutors and prosecuting agencies;
- (C) Transparency in the prosecution service;
- (D) Leadership by example;
- (E) Promoting the use of Chinese language in criminal proceedings.

May I advise you of our progress on these fronts.

(A) Standards

I have said repeatedly that it is vital to have securely in place a set of core prosecutorial values. For by the standards we uphold will we as prosecutors be judged. We have therefore taken active steps to impress upon prosecutors the central role they play in the criminal justice system, and the heavy responsibilities they bear. Every prosecutor must demonstrate fairness, integrity and ability. In April 1998 we issued our Prosecution Policy document, which guides Government

Counsel. The prosecutors are as independent as are the judges, and we have made a reality of Article 63 of the Basic Law, which guarantees that prosecutions will be brought free from interference. We have emphasised to our prosecutors that they represent the HKSAR, not the government, and that they are in no sense controlled by the State or any law enforcement agency. Whilst prosecutors should be determined and vigorous in the way they prosecute, we emphasise to them that it is not their duty to obtain a conviction at all costs. The interest of the prosecutor is that the right person should be convicted, that the truth should be known, that justice should be done. The prosecutor may strike hard blows but is not at liberty to strike foul ones. These are the ethics which provide the framework within which we expect our prosecutors to operate in the courts of the HKSAR.

Conviction rates (1 January 1998 to 30 September 1998) : Of cases which proceeded to court the conviction rates were as follows :

Court of First Instance : 76.8%	[1997 : 78.1%]
District Court : 81.7%	[1997 : 76.1%]
Magistrates Court : 73.8%	[1997 : 72.7%]
[Overall conviction rate : 75.6%	[1997 : 73.6%]

(B) Training

Upon assuming office, I initiated seven schemes to ensure that our prosecutors are both comprehensively trained in advocacy and learned in the law. Let me summarise these :

- (i) In-house advocacy training - Senior advocates hold seminars and workshops on Saturday mornings for prosecutors on such subjects as trial advocacy; appellate techniques; corruption law; gambling law; theft and deception law; intellectual property and copyright law; triad expert evidence; Bill of Rights and Basic Law; victims of crime; money laundering. These seminars have greatly assisted my staff;
- (ii) Criminal Advocacy Courses : These are now held twice a year for new prosecutors. The first was in March, the second in October. They last for three months, and include lectures, and practical experience of prosecuting in the Magistracies;
- (iii) Prosecutors as juniors : I have initiated a scheme whereby junior prosecutors are assigned on rotation as juniors in trials and appeals to give them direct exposure to advocacy at the higher levels. In addition, I have made arrangements for Court Prosecutors to raise their experience and understanding through attachment to Government Counsel in trials and magistracy appeals;

- (iv) Overseas advocacy training : To raise standards, I am sending 17 prosecutors to five courses organised in London in 1998 by the Middle Temple Advocacy Institute. These are intensive two-week courses involving advocacy training workshops and lectures covering themes ranging from general advocacy to practical advice from experts. The benefits derived from this scheme are enormous, and have produced immediate results;
- (v) Local advocacy training : Prosecutors are sent to courses organised by the Advocacy Institute of Hong Kong. Local experts regularly visit us as guest speakers;
- (vi) Mainland training : 27 prosecutors are being sent in 1998 to four courses at Fudan University, Shanghai, to learn of the legal and administrative systems of the Mainland;
- (vii) Overseas legal symposia : Prosecutors have participated actively in overseas legal symposia in 1998. They have learned much of latest legal developments elsewhere which can assist us in Hong Kong, they have forged valuable contacts with the world's legal fraternity, and they have taken the opportunity to advise that fraternity of the successful operation of 'One-country, two systems', and of the continuity of the rule of law and the legal processes in the HKSAR.

These training programmes have proved of immense value. Only if prosecutors are thoroughly and continuously trained can they discharge their duties to the highest standards. The momentum established on this front is, I believe, irreversible, and it will continue unabated into 1999. Our training initiatives are already bearing fruit. I am most relieved that complaints which were sometimes heard in the past as to standards of prosecutors are now altogether less frequent.

I must add that we do not keep our knowledge to ourselves. We seek to improve standards in other areas of government. For example :

- (i) Police : From 16.7.1997 to 14.9.1998, we provided police with 46 training sessions;
- (ii) Customs and Excise : In 1998, six prosecutors gave lectures to the C&E. Those lectures were video-recorded for future use. Also, we provided this Department with two days of mock trials;

- (iii) **Labour Department** : In the period 2.1.1998 to 1.9.1998, we provided 23 lectures and mock trials;
- (iv) **Inland Revenue Department** : In 1998, we provided eight lectures.

I am proud of the way my prosecutors have taken on these additional duties and, in this way, I believe we have significantly contributed to the raising of prosecutorial standards in other Departments.

(C) **Transparency and Information**

In the last year we have taken firm initiatives to promote transparency both within the prosecution service and generally. I believe that our working relationships with the Bar, the Law Society, the Police, the ICAC, the Customs and Excise Department, and others, have markedly improved. This process has been achieved not only through meetings, but also through the dissemination of information and the issue of new publications. In the past year the Prosecutions Division has produced :

- (i) The Prosecution Manual 1998;
- (ii) The Prosecution Policy document;
- (iii) The Criminal Appeals Bulletin;
- (iv) The glossary of (non-legislative) legal terms to assist prosecutions in Chinese;
- (v) The book of specimen charges to assist prosecutors in the formulation of offences against accused persons;
- (vi) The Classified Criminal Appeals Bulletin, duly bound, indexed and referenced;
- (vii) The Criminal Advocacy Course Training Manual, comprising 30 chapters, designed to provide new recruits with a comprehensive grounding in all facts of the law;
- (viii) The Prosecutions Division Quarterly : first issued in June 1998, this was a long overdue publication and its existence recognises that in a prosecution service which contains some 230 prosecutors it is vital to have a publication which disseminates information and news to prosecutors and generally keeps people in touch with what is going on;

- (ix) Regular press briefings, and such like, to advise the community of our activities. For example, after I led the delegation of Hong Kong prosecutors to the 3rd Annual Conference of the International Association of Prosecutors ('IAP') in Dublin, Ireland, from 1 to 5 September 1998, where we played an active role in considering the conference theme of 'Secret Crimes : Crimes Against Children', a release was issued. (The involvement of Hong Kong was warmly welcomed by the IAP, and my prosecutors will be closely involved in next year's conference, to be held in Beijing.)

(D) Leadership by example

Our core business is prosecuting. Senior prosecutors must go to court to conduct major cases. They must place themselves in the firing line. Such responsibilities cannot be left to junior prosecutors. Senior prosecutors must lead by example. This inspires junior prosecutors, it ensures an adequate level of representation for the HKSAR, and it sends the right message to the legal fraternity and to society. Whilst senior prosecutors have much by way of administration to attend to, it is essential for them to keep in touch with the realities of life at the coalface. I am pleased with the manner in which my senior directors have responded to my views in this regard. I include myself in this exercise, and in the footnote you will find reference to three of the more significant cases I have conducted this year¹. In November I am to represent the HKSAR in the appeal against conviction and sentence of Mr. Yip Kai-foon. My colleagues and I are providing leadership from the front and I believe this is appreciated by all those involved in the criminal justice system. I also believe that the emphasis we place upon leadership by example has boosted morale significantly amongst our 230 prosecutors.

In the Policy Address, the Chief Executive indicated that over the next year the Administration will 'improve our ability to conduct criminal cases which go to the Court of Final Appeal, by strengthening the Prosecutions Division of the Department of Justice'. This is most welcome, and our prosecutors aim to handle at least 90% of CFA, and CFA-related cases in 1999. Again, I am confident that the prosecution service will not be found to be wanting. That said, we will have our work cut out for us as a comparison between the workload of the CFA and the Privy Council demonstrates :

In 1995 there were 8 petitions and appeals in criminal cases from Hong Kong to the Privy Council. In 1996 the figure was 23. In the first six months of 1997 the figure was 9. However, between July 1997 and 15 October 1998, no fewer than 52 CFA and CFA-related cases were heard, and several more such cases are pending.

These figures demonstrate that full recourse is being had to the CFA, and that the CFA is being used to a far greater extent than was the Privy Council. The amount of work generated by the CFA poses a real challenge to the Prosecutions Division, and appropriate deployment of counsel is a priority for us.

(E) Chinese Language Programmes

When I took office I told you that the use of the Chinese language in the law was bound to increase and that I considered it right and proper that that should be so. I also emphasised that this must not be hurried to the extent that standards were compromised. We nonetheless aim to use our own prosecutors to handle 100% of the Chinese language Criminal Appeals and Magistracy Appeals in 1999, and 50% of the Chinese language trials in the District Court and the majority of such trials in the Court of First Instance. To enable the Prosecutions Division to meet its objectives, we have since the handover instituted a comprehensive and continuing programme to train our prosecutors to conduct criminal cases in Chinese. Between July 1997 and October 1998 we organised 33 seminars/workshops in five phases for prosecutors :

- (i) 11 practice sessions devoted to making legal submissions in Chinese;**
- (ii) 5 lectures on the drafting of court documents in Chinese;**
- (iii) and (iv) 10 mock trials in Chinese;**
- (v) 7 mock appeals in Chinese.**

In November 1998, we have arranged 4 seminars on drafting court documents in Chinese. In December 1998 and January 1999 we have arranged 5 mock appeals in Chinese. In March 1999, we have arranged four mock trials in Chinese.

By appropriate deployment of resources I am confident that we can do our part to advance the objectives in this area to which all those involved in the criminal justice system are committed.

Figures on Use of Chinese Language in Criminal Cases in the period 1 January 1998 to 30 September 1998 :

- (i) Court of Appeal : 10.03%**
[The corresponding figure for the period 13.2.1997 to 31.12.1997 was 2.59%]
- (ii) Court of First Instance (Magistracy Appeals) : 30.37%**
[The corresponding figure for the period 24.1.1997 to 31.12.1997 was 13.1%]

- (iii) Court of First Instance (Trials) : 9.91%**
[The corresponding figure for the period 1.7.1997 to 31.12.97 was 6.45%]
- (iv) District Court : 19.31%**
[The corresponding figure for the period 1.11.1996 to 31.12.1997 was 13.1%]
- (v) Magistrates Court (Court Prosecutors only) : 67.29%**
[The corresponding figure for the period 1.4.1997 to 31.12.1997 was 62.8%]

These comparisons demonstrate the momentum which now exists on this front. And in that process my counsel have been, and are being trained to play their full part.

I must add that although we intend to make full use of the expertise we have developed in-house in criminal proceedings, we remain wedded to the belief that there are legitimate public interest reasons why some prosecution work should be briefed out to the private sector, perhaps the most important being the promotion of a strong, experienced and independent Bar. It is good for the private sector to understand fully the nature of prosecution work. Our view is reflected in :

Statistics for Briefing Out in the period 1 January 1998 to 30 September 1998 :

- (i) Court of First Instance : 41 cases were briefed out, accounting for 363 court days. This may be compared with 501 cases prosecuted by Government Counsel, and accounting for 2,166 court days. The percentage of briefing out to private lawyers was 7.56%;**
- (ii) District court : 555 cases were briefed out, accounting for 2,263 court days. This may be compared with 716 cases prosecuted by Government Counsel, and accounting for 824 court days. The percentage of briefing out to private lawyers was 43.67%;**
- (iii) Magistrates Court : 119 cases were briefed out, accounting for 273 court days. This may be compared with 227 cases prosecuted by Government Counsel, and accounting for 465 court days. The percentage of briefing out to private lawyers was 34.39%. In addition, on 934 days private lawyers substituted for Court Prosecutors to conduct the daily lists.**

OVERALL PERCENTAGE OF BRIEFING OUT : 33.12%

CONCLUSION

It has been a remarkable year for the Prosecutions Division, a year of challenge, regeneration and progress. Our prosecutors have responded superbly to the vision I set for them with commitment, professionalism and enthusiasm. I can honestly say that in my 20 years in this Department the professional standards of the Prosecutions Division have never been higher. The community has a prosecution service which is modern, effective and dedicated. I am proud of the way in which the 230 prosecutors of the HKSAR deal with their workload. They have no control over the number, timing or type of case the law enforcement agencies submit. We undoubtedly face formidable challenges. Thus :

- (i) From January to August 1998, no less than 6,612 advices were given by the Prosecutions Division. In the same period in 1997 the corresponding figure was 5,731;**
- (ii) In the period 1.1.1998 to 30.9.1998, there was an increase of 38% in the number of persons prosecuted for corruption offences over the same period in 1997;**
- (iii) In the period 1.1.1998 to 30.9.1998, there was an increase of 42% in serious fraud reports over the same period in 1997.**

Such developments as these place us under great strain. Our resources and our mettle are being sorely tested. However, I remain confident that we now have the spirit, professionalism and dedication to meet these challenges to the required standard. I say to you frankly that the HKSAR is fortunate at this stage in its development to have at its disposal a prosecuting authority which I consider second to none.

I. Grenville Cross SC

¹ On 26 February 1998 DPP appeared in the Court of Final Appeal in *HKSAR v Lam Chi-keung* FAMC 12/97, when the CFA ruled that the new legislation which facilitates the giving of unsworn testimony by children and young persons who have been abused does not contravene the right of an accused to a fair trial as guaranteed by the International Covenant on Civil and Political Rights. On 17 July 1998, DPP appeared in the Court of First Instance in *HKSAR v Hiroyuki Takeda* MA 315/98, when the CFI for the first time considered the crime of publishing obscene pictures of children on the Internet, and held that severely deterrent sentences of imprisonment were appropriate for offenders. On 25 August 1998, DPP appeared in the Court of Appeal in *Secretary for Justice v Wong Tsz-kin* AR 8/98, when the Court of Appeal was asked for the first time to consider the use of the community service order, and it concluded that this was not an appropriate penalty for a man who sexually abused a young girl,

and substituted that order with a sentence of imprisonment.

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