

律政司
律政司司長辦公室

香港金鐘道66號
金鐘道政府合署高座4樓



DEPARTMENT OF JUSTICE
Secretary for Justice's Office

4/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong

Web site: www.doj.gov.hk

網址: www.doj.gov.hk
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電話號碼 Tel. No.: 2867 2165
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28 April 2008

Mrs Percy Ma
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Hong Kong

By Fax & By Post
Fax : 2509 9055

Dear Mrs Ma,

Panel on Administration of Justice and Legal Services
Pre-Trial Interviewing of Witnesses by Prosecutors

Please find attached information about the Pre-Trial Interviewing of Witnesses by Prosecutors.

I would like to highlight that the Working Group is conducting a monitoring exercise to collect relevant statistics and information to assess the need to introduce such a scheme in Hong Kong and no interviewing of civilian witnesses has yet been conducted. After the 9-month monitoring exercise is complete, in December 2008, the Working Group will advise if any change to existing practice is considered to be expedient in the interests of justice. If any change is recommended, in order to bring Hong Kong into line with other major common law jurisdictions, then the legal sector, and others, will be consulted before any change is made to present practice.

Yours sincerely,

(Elizabeth Tai)
Administrative Assistant
to Secretary for Justice

Pre-Trial Interviewing of Witnesses by Prosecutors

In light of the developments on pre-trial witness interviews ('PTWI') by prosecutors in other common law jurisdictions, the DPP set up a Working Group in May 2007 to examine the feasibility of introducing such a scheme in Hong Kong and to look into related issues.

2. The conduct of PTWI is a common feature in New South Wales, Canada, and Scotland. For England and Wales, a pilot scheme was introduced in January 2006. That was considered a success and a national roll-out was implemented in April 2008.

3. Although PTWI can serve different purposes e.g. explaining court procedures to witnesses, and assisting prosecutors to understand complex evidence, the major attraction is the opportunity given to prosecutors to talk to the witness face to face so as to seek to assess the reliability, or otherwise of the witness and his/her likely credibility. In this way, the prosecution process can be strengthened as weak cases are weeded out at an early stage.

4. It is against this background that the Working Group was set up and was given the task of studying and reporting on the issues. In November 2007, the Working Group submitted its report to the DPP, and recommended, *inter alia*, that the situation in Hong Kong be monitored for a period of 9 months during which relevant statistics and information will be collected. This recommendation was accepted by the DPP. The monitoring exercise will cover trials in the Court of First Instance and the District Court, as well as vulnerable witness/ICAC cases tried in the Magistrates' Court.

5. The 9-month period runs from 1 April to 31 December 2008. At the end of this period, the Working Group will make its final recommendations to the DPP.

6. In order to monitor cases with a view to assessing the need to introduce the PTWI scheme in Hong Kong, the prosecutors' Case Report Form has been revised, with the addition of these questions :

- (i) If the case resulted in an acquittal, was that because the evidence of the main civilian witness(es), including the victim, was not considered credible?
- (ii) If so, do you consider that it would have been beneficial for a prosecutor to have interviewed the witness(es) in question prior to trial, in order to make an assessment of the witness's evidence, and thereby to seek to identify potential problems at an early stage?

7. Starting from 1 April 2008, trial counsel and court prosecutors are required to provide their comments in response to the above questions in the Case Report Forms.

8. This monitoring period will run until the end of December 2008, after which the Working Group, based on the comments received, will make its final recommendations to the DPP concerning whether a PTWI scheme, similar to those adopted in the other common law jurisdictions, should be implemented in Hong Kong.

檢控人員在審訊前會見證人

鑑於在其他普通法司法管轄區有關檢控人員在審訊前會見證人(“審前會見”)的做法的發展，刑事檢控專員於2007年5月成立工作小組，研究在香港推行這類計劃的可行性，以及探討相關事宜。

2. 進行審前會見，是新南威爾斯、加拿大及蘇格蘭的普遍做法。英格蘭及威爾斯則於2006年1月推行試驗計劃，由於成效卓著，因此該計劃於2008年4月推及至全英國。

3. 雖然審前會見可達到不同目的，例如檢控人員可向證人解釋法院程序，而証人可協助檢控人員了解複雜的證據，但會見最大的好處，是在於檢控人員有機會與證人面談，以嘗試評估證人是否可靠，與其可信程度。此舉可以把証據薄弱的案件及早剔除，從而強化檢控程序。

4. 工作小組在這個背景下成立，負責研究上述事宜，並提交報告。2007年11月，工作小組向刑事檢控專員提交報告並提出建議，建議包括從搜集相關的統計數字和資料，就香港的情況進行9個月的監察。這項建議獲刑事檢控專員所接納。有關的監察範圍會包括原訟法庭及區域法院的審訊，以及在裁判法院審訊的涉及易受傷害證人／廉政公署的案件。

5. 為期9個月的監察期為2008年4月1日至12月31日。工作小組會在監察期後向刑事檢控專員提出最後建議。

6. 為了監察案件，以評估在香港推行審前會見計劃的需要，由檢控人員所填寫的案件報告表格已予修訂，新增了以下問題：

(i) 如案件的被告人被裁定罪名不成立，是否因為主要市民證人(包括受害者)的證供被認為不可信？

(ii) 若是，如果檢控人員在審訊前會見有關證人，以評估證人的證供，從而及早找出潛在的問題，你認為是否有好處？

7. 由2008年4月1日起，負責案件審訊的律師及法庭檢控主任須在案件報告表格內回應上述問題。

8. 監察期會於2008年12月底完結。其後，工作小組會根據收到的意見，向刑事檢控專員提出最後建議，指出香港應否仿效其他普通法司法管轄區，推行類似的審前會見計劃。