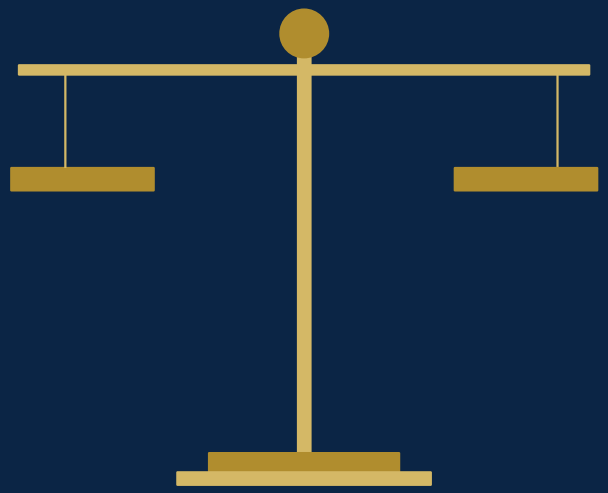
DEPARTMENT OF JUSTICE • CONSTITUTIONAL AND POLICY AFFAIRS DIVISION
律政司・憲制及政策事務科

Evidence (Amendment) Bill 2026
《2026年證據(修訂)條例草案》

Reforming Hearsay in Criminal Proceedings
刑事法律程序中的傳聞證據改革



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Core Concept of Evidence 證據的核心概念

- In criminal proceedings, the use of evidence involves two distinct questions: **Admissibility** and **Weight**
  在刑事訴訟程序中，處理證據涉及兩個截然不同的問題：**可接納性**及**分量**

- **Step 1: Admissibility** (Yes/No): Decided by the Judge. If the evidence is legally inadmissible, it is excluded completely.
  第一步：可接納性（「是/否」的問題）：由法官決定。如證據在法律上不可接納，即會被完全豁除

- **Step 2: Weight** (Matter of Degree): Decided by the tribunal of fact (i.e. jury for High Court trials, or the trial judge for trials at District Court or Magistrates' Courts). If the evidence is admitted, the tribunal of fact decides the reliability and weight. They can choose to give it significant weight or no weight at all.
  第二步：分量（程度的問題）：由事實裁斷者（即高等法院審訊中的陪審團，或區域法院或裁判法院審訊中的原審法官）決定。證據一旦獲接納，事實裁斷者須衡量其可信性及應佔分量，他們可選擇給予證據極大分量或完全不予分量

- This Bill concerns **admissibility** of hearsay evidence in criminal proceedings. 本草案關乎傳聞證據在刑事訴訟程序中的**可接納性**

Hearsay Evidence 傳聞證據

- **What is Hearsay Evidence?** Any representation of fact or opinion (written, non-written, or conduct) made by a person **outside** of giving oral evidence in the proceedings, which is tendered to prove the truth of its content. **甚麼是傳聞證據？**任何事實或意見的表述（書面、非書面，或以行為作出），如**並非**由該人於有關法律程序中作出口頭證供時作出，而援引目的為證明其所載內容屬實。

- **Example:** Witness B testifies in court, "A told me that the accused stabbed his wife." B's testimony is then used to prove that the accused actually stabbed his wife. **例子：**證人乙在庭上作供說：「甲曾對我表示，被告用刀刺傷其妻子。」其後乙的證供用以證明被告確實曾用刀刺傷其妻子。

- **The Rule against Hearsay:** At common law, hearsay evidence is inadmissible to prove the truth of its content. The primary rationale is that the declarant's credibility and accuracy cannot be tested in court through cross-examination. **豁除傳聞證據的規則：**在普通法，如援引傳聞證據的目的是用以證明其所載內容為真確的話，是不得獲接納為證據。其主要理據在於，陳述者不在庭上，法庭無法透過盤問來考驗其誠信及準確性。

The Mischief of the Common Law Rule 普通法規則的弊端

- The common law rule against hearsay is **complex, strict and inflexible, and excludes hearsay evidence even if it is cogent and reliable** — prejudicing the search for truth by the court. 普通法豁除傳聞證據的規則**複雜、嚴苛和欠缺彈性，而且即使傳聞證據有力及可靠，也在豁除之列**—從而阻礙法庭尋求真相。

- Following a 1996 Law Reform Commission report, Hong Kong abolished the hearsay rule in **civil** proceedings in **1999** — yet criminal proceedings continue to apply the rigid common law rule. 根據1996年的法律改革委員會報告，香港於**1999年**在**民事**法律程序中廢除傳聞證據規則；然而刑事程序仍適用僵化的普通法規則

- **Real-life example**: A 13-year-old boy (with Anxiety Disorder and Depression) was sexually assaulted by two men met on a dating app. The boy gave a detailed Video-Recorded Interview (VRI) to the police. Later, the boy's mental condition deteriorated and showed suicidal tendencies. Under the strict common law rule, the VRI is inadmissible because the boy cannot be cross-examined. Knowing the boy could not take the stand, one of the accused changed his intended guilty plea to not guilty. The prosecution cannot proceed. **真實案例：**一名患有焦慮症及抑鬱症的13歲男童，遭在交友程式結識的兩名男子性侵。該男童向警方提供了一份詳細的錄影會面記錄。其後，男童精神狀況惡化並出現自殺傾向。在嚴格的普通法規則下，由於男童無法出庭接受盤問，該錄影會面記錄不能作為呈堂證據。其中一名被告在得知男童無法出庭作供後，便將原擬承認控罪的答辯改為不認罪。控方最終無法繼續檢控。

A Reform Long Overdue 姍姍來遲的改革

A **Quarter-Century** in the Making: Catching Up to the Common Law World
歷時**四分之一世紀**，追趕普通法世界的步伐

2001
LRC study commenced
法改會展開研究

2009
LRC Report published
法改會發表報告

2018
Bill first introduced
首次提出草案

2026
Refined Bill introduced
提出優化草案

1975
USA
美國

1988
South Africa
南非

1995
Australia
澳洲

2003
England
英格蘭

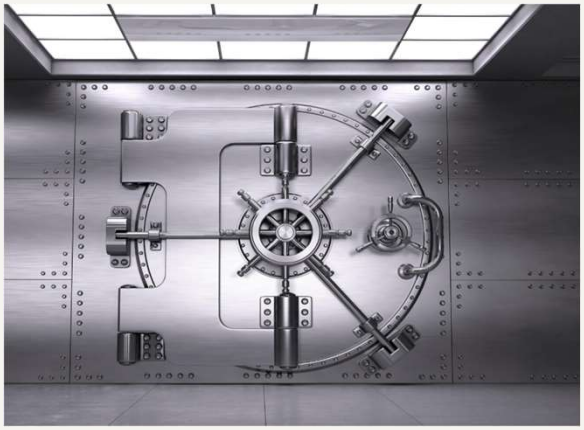
2006
New Zealand
新西蘭

Overriding Objective of Reform 改革的根本目標

The status quo is like an iron plate, blocking all hearsay evidence regardless of its reliability or necessity.
現狀猶如鐵板一塊；無論傳聞證據有多可靠或必要，一概被排除在外

Overriding Objective 根本目標

To remove the rigidity of the common law rule by providing that, in certain circumstances, hearsay evidence shall be admissible. Once admitted, deciding its weight and reliability becomes a matter for the tribunal of fact (i.e. jury for High Court trials, or the trial judge for trials at District Court or Magistrates' Courts).
透過在若干指明情況下規定傳聞證據可予接納，以消除普通法規則過於僵化的弊端。傳聞證據一旦獲接納，即由事實裁斷者（即高等法院審訊中的陪審團，或區域法院或裁判法院審訊中的原審法官）衡量其可信性及應佔分量



The new rules act as a secure steel vault where hearsay remains locked out by default. Both the prosecution and the defence can only "unlock" the vault by meeting certain conditions, and the prosecution faces a higher burden of proof to turn the key.
在新規則下，傳聞證據仍被「鎖」在一個安全的鋼鐵保險庫之外。控辯雙方惟有符合若干條件，方能將其「解鎖」，令傳聞證據得以呈堂；就開啟這把鎖而言，控方須承擔的舉證責任較辯方為重

Formulating the Hong Kong Model 構建香港模式

Too rigid 過於僵化 ← **Balanced 均衡** → **Too loose 過於寬鬆**

US model

Federal Rules of Evidence (1975)

美國模式《聯邦證據規則》

Feature: A blanket exclusionary rule codifying 28 specific exceptions.

特點：保留全面豁除傳聞證據的規則，只將28項具體例外規定成文化

Assessment: Too Rigid – Complete codification cannot cater to all justifiable, unforeseen scenarios in criminal trials.

評估：過於僵化—全面列舉式的成文化，難以涵蓋刑事審訊中所有合理但事前難以預見的情況

✗

New Zealand model

Evidence Act 2006

新西蘭模式《2006年證據法令》

Feature: A principled statutory discretion based strictly on the core criteria of **necessity** and **reliability**.

特點： 以**必要性**及**可靠性**兩項核心標準為基礎的原則性成文酌情機制

Assessment: **Adopted with modifications** – A high-threshold model that protects accused's right to fair trial.

評估： **經改良後採納**—高門檻模式，可保障被告獲公平審訊的權利

✓

English model

Criminal Justice Act 2003

英格蘭模式《2003年刑事司法法令》

Feature: Statutory gateways based on unavailability, with broad residual discretion to admit hearsay in the interests of justice.

特點： 以證人不能出庭作供為法定門檻，並輔以基於秉行司法公義為由接納傳聞證據的廣泛剩餘酌情權

Assessment: Too Loose – Fails to guarantee reliability; the residual discretion is far too open-ended and vague.

評估： 過於寬鬆—不足以確保可靠性；剩餘酌情權的範圍過於廣泛而未有清楚界定

✗

Scope of Application 適用範圍

The Bill applies to defined categories of criminal proceedings.
條例草案適用於若干界定明確的刑事法律程序。

✓ COVERED 適用

- Criminal proceedings to which strict rules of evidence apply 嚴格證據規則適用的刑事法律程序
- Sentencing proceedings: hearsay evidence adduced by prosecution to prove **disputed** aggravating factor 判刑法律程序：由控方提出、用以證明**受爭議**加刑因素的傳聞證據
- Surrender of fugitive: committal proceedings and appeals 移交逃犯：交付拘押的法律程序及上訴

✗ EXCLUDED 不適用

- National security proceedings 國家安全案件的法律程序
- Sentencing proceedings: hearsay evidence adduced by defence to prove **mitigating** factor and adduced by prosecution to prove **undisputed** aggravating factor 判刑法律程序：由辯方提出用以證明**減刑**因素，及由控方提出用以證明**無爭議**加刑因素的傳聞證據
- Proceedings commenced before the Bill's commencement 於草案生效前已展開的法律程序

Codifying and Rationalizing the Common Law Rule 將普通法規則成文化並理順

The Bill replaces a fragmented body of judge-made rules with a clear, structured statutory scheme.
條例草案以一套清晰、結構嚴謹的成文法制度，取代現時由法院判例所形成的零散繁瑣規則。

BEFORE 立法前

Common Law
普通法

Complex • Arbitrary • Rigid
繁複 • 任意 • 僵化

AFTER 立法後

Statutory Scheme
成文法制度

The new statutory gateways
新的法定准入門檻

Existing statutory exceptions
現有的成文法例外規定

Preserved common law exceptions
被保存的普通法例外規定

Schedule 2 preserves certain common law exceptions , such as confessions, res gestae, expert opinion, reputation as to character, etc.
附表2保留若干普通法例外規定，例如招認、與案件同步並存的陳述、專家意見、關乎品格的名聲等。

Overview of the Admissibility Gateways 准入門檻概述

Hearsay evidence is admissible only through one of three specific statutory gateways.
傳聞證據只可透過三種特定的法定准入門檻之一而獲接納。

Agreement
在協議的情況下

Hearsay evidence is admitted if prosecution and defence agree.
如控辯雙方同意，傳聞證據即可獲接納。

Section 55K 第55K條

Unopposed
在未遭反對的情況下

A hearsay evidence notice is filed and no opposition is raised.
一方提交傳聞證據通知，而未遭他方提出反對，傳聞證據即可獲接納。

Section 55L 第55L條

Opposed with Court Permission
在遭反對並獲法庭准許的情況下

A hearsay evidence notice is filed and opposition is raised. The court determines admissibility against stringent criteria.
一方提交傳聞證據通知，而他方反對，則由法院按嚴格標準決定是否准許接納該傳聞證據。

Section 55R 第55R條

Gateway 1 : Admission by Agreement 途徑一： 透過協議接納傳聞證據

Judicial efficiency is promoted where the parties consider the hearsay evidence uncontroversial and agree to admit it under section 55K.
當控辯雙方均認為有關傳聞證據並無爭議時，可根據第55K條透過協議方式接納該證據，從而提升司法效率。

Prosecution and accused agree to admit hearsay evidence
控辯雙方同意接納傳聞證據

RESULT結果

Evidence Admitted
證據獲接納

Gateway 2： Unopposed Hearsay Evidence Notice 途徑二:傳聞通知未遭反對

Section 55L: Where hearsay notice is given and not opposed, the hearsay evidence is admitted.
第55L條： 如一方發出傳聞證據通知，而無人反對，該項傳聞證據即獲接納。

ADDUCING PARTY 欲援引傳聞證據的一方

Issue Hearsay Notice 發出傳聞證據通知
Within **28 days** of fixing trial date 在擇定聆訊日期後的28日內
(Requirements of hearsay notice are set out in section 55N) (傳聞證據通知的規定載於第55N條)

OTHER PARTIES 其他各方

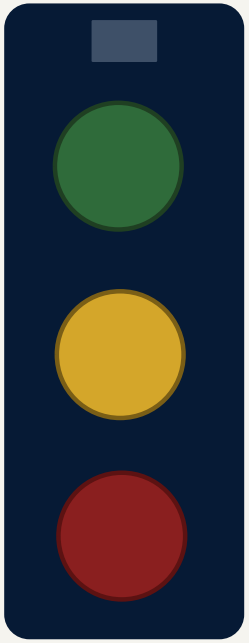
No Opposition Notice Filed 無人發出反對通知
Other parties have **14 days** to oppose 其他訴訟方可在14日內提出反對
(Requirements of opposition notice are set out in section 55O) (反對通知的規定載於第55O條)

RESULT結果

Evidence Admitted
證據獲接納

Enhanced Procedural Flexibility 經優化的程序彈性

Section 55P: The court has broad discretion to vary standard notice requirements.
第55P條：法庭享有廣泛酌情權，可更改有關通知的標準要求。



STANDARD 標準

Written Notice 書面通知

Formal written notice filed within the statutory period.
在法定期限內提交正式書面通知

FLEXIBILITY 彈性

Discretion to Vary Deadlines
更改期限的酌情權

Court may vary filing deadlines for notices.
法庭可更改提交通知的期限

CONTINGENCY 應變

Oral Notice Permitted
准許口頭通知

Court may allow oral notice be given **before the court**.
法庭可准許**在法庭席前**作出口頭通知

Gateway 3: Hearsay Evidence Notice Opposed and Court Permission Granted for Admission
途徑三:傳聞通知遭反對而法庭准許接納傳聞證據

Where the hearsay evidence notice is opposed, all five stringent criteria must be satisfied under section 55R before the hearsay evidence is admissible. 如有人反對傳聞證據通知，該傳聞證據必須同時符合第55R條下五項嚴格的準則，方可接納。

FIVE STATUTORY CRITERIA 五項法定準則

1. The maker of the hearsay statement (declarant) is sufficiently identified. 已充分識別作出有關傳聞陳述的人（陳述者）的身份

2. The hearsay statement would be admissible if given as oral evidence in the proceedings. 如該傳聞陳述由陳述者在審訊中以口頭證供方式提出，會屬可獲接納的證據

3. The condition of **necessity** is fulfilled. 符合**必要性**條件

4. The condition of **threshold reliability** is fulfilled. 符合**可靠性門檻**條件

5. The probative value of the hearsay evidence is greater than any prejudicial effect. 傳聞證據的證案價值大於可能造成的不良影響

The Necessity Condition 必要性條件

The admission of hearsay evidence must be "necessary". The adducing party bears the burden of proof. Prosecution must prove beyond reasonable doubt and the defence must prove on the balance of probabilities. 接納傳聞證據必須屬於「必要」。提出接納傳聞證據的一方負有舉證責任。控方須達至毫無合理疑點的標準；辯方則須達至相對可能性較高的標準。

NECESSITY
必要性
Section 55S
第55S條

1. Declarant is **dead**
陳述者已**去世**

2. Declarant is **unfit** to testify, in person or in another competent manner, by reason of age, physical or mental condition
陳述者因年齡、身體狀況或精神狀況，**不適宜**親自或以另一合乎規定的方式擔任證人

3. Declarant is **outside HK** and it is **not reasonably practicable** to secure his attendance or make him available for examination in another competent manner
陳述者**不在香港**，且**不能在合理切實可行的情況下**確保其親自到庭，或以另一合乎規定的方式安排其接受查問

4. Declarant **cannot be found** despite **all reasonable steps** taken
雖已採取**一切合理步驟**尋覓陳述者，但仍**無法尋獲**

5. Declarant is entitled to refuse to testify on **self-incrimination** grounds (for defence only)
陳述者以可藉**導致自己入罪**為由而有權拒絕作供（只適用於辯方）

The Threshold Reliability Condition 可靠性門檻條件

The condition of threshold reliability ensures that hearsay evidence is not admitted unless the court is satisfied that its circumstances provide a "**reasonable assurance** that the hearsay evidence is reliable". Five factors must be assessed. 可靠性門檻條件，確保只在法庭信納有關情況「對該傳聞證據屬可靠證據提供了**合理保證**」時，方接納傳聞證據。法庭必須評估五項因素。

FIVE MANDATORY FACTORS 五項必須考慮的因素

- ✓ Nature and content of the statement
  陳述的性質及內容
- ✓ Circumstances in which statement was made
  作出該陳述的情況
- ✓ Circumstances relating to truthfulness of the declarant
  關乎該陳述的陳述者是否誠實的情況
- ✓ Circumstances relating to accuracy of the declarant's observation
  關乎該陳述者的觀察是否準確的情況
- ✓ Whether statement is supported or contradicted by other admissible evidence
  是否有其他可獲接納的證據，支持或否定該陳述

Section 55T 第55T條

Safeguards for the Accused 對被告的保障

The Bill protects the accused's right to fair hearing also through safeguards operating **during trial and after the admission** of the hearsay evidence. 條例草案亦有保障措施，在**審訊期間及接納傳聞證據之後**運作，保障被告人接受公平審訊的權利。

DURING TRIAL 審訊期間

Testing Credibility 測試可信性

Section 55W 第55W條

- Expressly permits the opposing party to adduce evidence during trial attacking the declarant's credibility.
  明確准許反對方在審訊中提出證據，質疑陳述者的可信性
- Allows admission of the declarant's previous inconsistent statements to expose contradictions.
  容許接納陳述者先前不一致的陳述，以揭示矛盾之處

AFTER ADMISSION 接納之後

Subsequent Exclusion 其後豁除

Section 55U 第55U條

- Where the admission of hearsay evidence is initially opposed but then admitted with the court's admission, the judge can still subsequently exclude it during trial if it is in the interests of justice to do so.
  若傳聞證據的接納最初遭反對，但經法庭准許接納；其後在審訊期間，法官如認爲有利於秉行公義，仍可豁除該證據

Refined Ultimate Safeguard 經優化的終極保障

What happens if a piece of hearsay evidence is admitted, but later in the trial, it turns out to be unreliable or highly prejudicial? 倘若某項傳聞證據已獲接納，但在審訊後期卻顯示其屬不可靠，或對被告造成高度不利的影響，應如何處理？

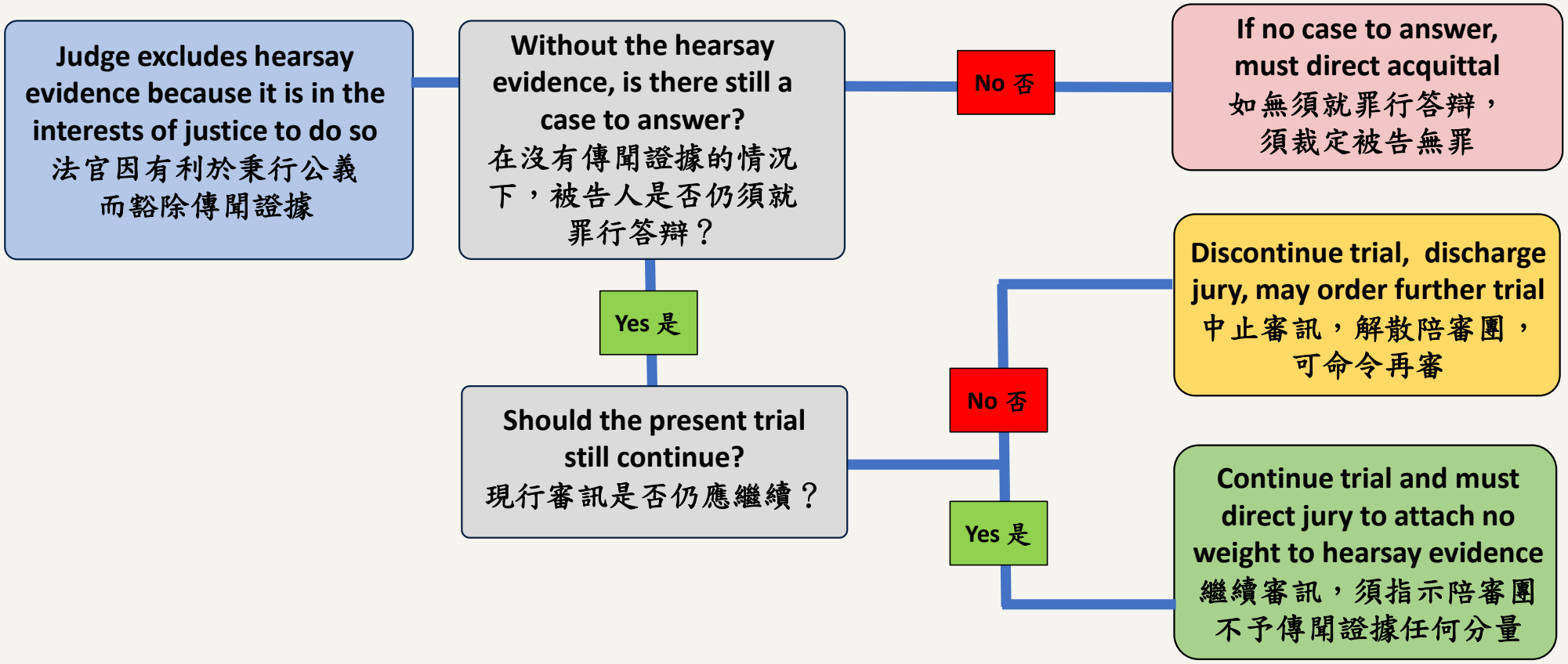
2018 : The "Unsafe to Convict" Model 2018年：「定罪不穩妥」模式	**2026 : The "Subsequent Exclusion" Model** 2026年：「其豁除」模式
The *Only* Solution : Judge **must** direct **acquittal** if he concludes a conviction based on the hearsay evidence would be "unsafe." **唯一解決方法**：如法官認為基於有關傳聞證據而作出的定罪屬「**不穩妥**」，**必須**裁定被告**無罪**	**The *Flexible* Solution:** The judge has a flexible range of remedies if he concludes it is in the "**interests of justice**" to exclude the admitted hearsay evidence. ***靈活解決方法***：如法官認為豁除已接納的傳聞證據是有利於**秉行公義**，法官可採取一系列靈活的補救措施
The Problem: Even if the prosecution has other strong, reliable evidence to support a conviction, the judge must still acquit the defendant. **問題**：即使控方另有其他有力而可靠的證據足以支持定罪，法官仍須裁定被告無罪	**The Remedies:** Depending on practical circumstances, court can choose to continue or stop the trial, order further trial, or acquit the defendant **補救措施**：視乎實際情況，法庭可選擇繼續或中止審訊、命令再審，或裁定被告無罪

Subsequent Exclusion 其後豁除

SIX MANDATORY FACTORS 六項必須考慮的因素

- Nature of proceedings
  法律程序的性質
- Nature of the statement
  陳述的性質
- Probative value of hearsay
  傳聞證據的證案價值
- Material change in circumstances
  重大變更情況
- **Importance of hearsay to or against accused's case**
  傳聞證據對於或針對被告案情的重要性
- **Taking into account the totality of other evidence, the prejudice that may be caused to the accused by the admission of the hearsay evidence (including any prejudice that may be caused by the lack of cross-examination of the declarant concerned)**
  在顧及其他證據的整體後，接納該傳聞證據可能對該被告造成的不利影響（包括因不能盤問有關陳述者而可能對該被告造成的任何不利影響）

Subsequent Exclusion 其後豁除



THANK YOU