特稿
Feature Articles

對付洗黑錢罪行的戰鬥不能稍有鬆懈
The Battle against Money Laundering Must Go On

助理刑事檢控專員何詠光先生
By Mr Paul Ho, Assistant Director of Public Prosecutions

要遏止犯罪集團擴張和恐怖份子籌集資金活動，最有效的方法之一，無疑就是令罪犯失去犯罪得益。因為這些犯罪得益正是罪犯延續犯罪的財政命脈。可是，就香港打擊洗黑錢制度是否有效達致這個目標，近日社會上明顯出現不同意見。

在一個星期天早上，我在一份本地英文報章[1]讀到一篇文章，嚴厲的指稱在香港證明洗黑錢罪簡直容易不過。文章稱犯罪者即使對背後的犯罪活動毫不知情，亦會在沒有任何原本罪行證據的情況下被定罪，並要面對長時間的監禁刑期。該篇文章甚至指稱，香港接連的檢控洗黑錢活動，實際上是破壞了香港法治。文章所帶出的問題是：香港的打擊洗黑錢法例是否過於嚴苛？

不足兩星期後，另一份本地中文報章[2]刊載一篇文章，指鑑於香港特區政府於2012年獲得巨額的利得稅收入，並由於香港利得稅率低，香港已成為"洗黑錢天堂"。如果這個指控屬實，那麼所帶出的問題便正好相反：香港的打擊洗黑錢法例是否過於寬鬆？

在現代世界，所有法律制度時刻受到公眾監察，我們的打擊洗黑錢制度是否有效，也同樣要經得起測試。香港是一個重要國際金融中心，與倫敦、紐約及東京齊名，一直奉行自由經濟，讓資金在穩妥完善的金融和法律架構內快速順暢流轉。商界企業在香港開業，可受惠於簡單的稅制、低稅率和可靠的法律制度，並可善用全球第二大經濟體系所提供的無限商機[3]。然而，在如此規模的自由經濟環境下，隨之而來的是會危害社會但無可避免的現實，就是洗黑錢活動根本無法徹底根絕。在考慮香港的洗黑

There is little dispute that one of the most effective ways to curb the expansion of criminal enterprises and terrorist financing operations is to deprive criminals of their illicit profits. These profits are the financial lifeblood that sustains their crimes. Recently, however, it has been impossible not to notice the divided views on the efficacy of the anti-money laundering regime in Hong Kong in achieving this goal.

One Sunday morning, I read an article in a local English newspaper[1] which contained invidious accusations that the money laundering offence was simply too easy to prove in Hong Kong. The article said that offenders, who were convicted in the absence of any evidence of the predicate crime, faced lengthy imprisonment terms even if they knew nothing of the underlying criminal activity. It even alleged that the rule of law was effectively undermined by the continued prosecution of money laundering. The article begs the question: Is Hong Kong's anti-money laundering law too stringent or draconian?

Less than two weeks later, another article appeared in a local Chinese newspaper[2] which alleged that in view of the vast amount of profit tax received by the HKSAR Government in 2012, and thanks to the low profit tax rate, Hong Kong had already become the "Paradise of Money Laundering". If that accusation holds any truth, it begs the opposite question: Is the anti-money laundering law too lax?

All legal systems in the modern world are under constant scrutiny by the public, and now it is the efficacy of our anti-money laundering regime that is put to the litmus test. As a major international financial centre alongside London, New York and Tokyo, Hong Kong has a free economy which allows the smooth, speedy transfer of funds within a safe, comprehensive financial and legal framework. Commercial enterprises setting up business in Hong Kong can benefit from the simple tax system, low tax rates, reliable legal system and unlimited business potential provided by the second largest economy in the world.[3] One undesirable yet unavoidable concomitant reality is that money laundering activities can never be utterly eradicated in a free economy of this scale. The question of whether money laundering activity is rampant in Hong Kong should be viewed with this backdrop in mind.

Hong Kong has robust and comprehensive laws to combat money laundering and terrorist financing. They include the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405 and the Organized and Serious Crimes Ordinance, Cap. 455 which empower the courts to restrain and confiscate illicit proceeds emanating from a wide range of indictable offences; the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 which targets terrorist property; and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap. 615 which criminalizes the non-compliance of customer due diligence requirements by financial institutions.

錢活動是否猖獗這一問題時，應顧及這個背景。

香港有健全完善的法例打擊洗黑錢和恐怖分子籌集資金活動，包括：《販毒（追討得益）條例》（第 405 章）及《有組織及嚴重罪行條例》（第 455 章）賦予法庭權力限制和沒收源自各種可公訴罪行的犯罪得益；《聯合國（反恐怖主義措施）條例》（第 575 章）旨在對付恐怖分子的財產；以及《打擊洗錢及恐怖分子資金籌集（金融機構）條例》（第 615 章）把金融機構不遵從就客戶作盡職審查的規定列為刑事罪行。

當局檢控洗黑錢罪行，是以《有組織及嚴重罪行條例》（第 455 章）第 25 條為依據。一如任何其他刑事罪行，要證明被告干犯洗黑錢罪，控方須證實案中毫無合理疑點。控方須按照這項高標準，以強而有力的證據，證明被告有干犯洗黑錢罪行的犯罪意圖，而此犯罪意圖包含兩項元素，即主觀及客觀元素[4]，也就是說，案件的事實和情況，會令社會上思想正常的人士相信，某人正在處理嚴重罪行的得益，而被告人知悉該等事實和情況。“處理”財產的行為包括：收受或取得、隱藏或掩飾、處置或轉換該財產、將該財產運入香港或調離香港，以及利用該財產作借貸或作保證。[5] 法院過往有多項判決，推翻了“有合理理由相信”的驗證是違反無罪推定原則這一論點。[6] 此外，相關案例早已確立，在檢控洗黑錢罪行方面，控方無必要證明有干犯原本罪行[7]、具體說明原本罪行的行為[8]，或證明財產的非法來源[9]。在所有刑事案件中，被告在未就某項罪行被定罪前，都會被假定無罪，而洗黑錢罪也不例外，必須遵守這項根深蒂固的規定。

洗黑錢是暗中肆虐禍害社會的罪行。為了維護公義，我們必須根據國際公認的標準檢控洗黑錢罪犯，一經定罪，即須判處適當刑罰。我們希望令罪犯失去以不法手段取得的收益，這樣可發揮以儆效尤的作用，亦只有這樣才足以回應公眾對這種罪行的憎惡。我們身為檢控人員，定必致力執行打擊洗黑錢法例，並根據符合國際標準的既定政策，進行檢控。檢控洗黑錢除可維護法治外，還可令罪犯難以在本地清洗犯罪得益，從而維持香港作為主要金融及區域中心的地

The money laundering offence is prosecuted under section 25 of the Organized and Serious Crimes Ordinance, Cap. 455. As with all other criminal offences, money laundering can only be proved against a defendant beyond all reasonable doubt. The criminal intention for this offence, which consists of both the subjective and objective elements,[4] that is there are facts and circumstances that would lead a right-thinking member of the community to believe that he or she is dealing in the proceeds of a serious crime and that the accused knew those facts and circumstances, needs to be proved to this high standard with cogent evidence. The act of “dealing” in property includes receiving or acquiring, concealing or disguising, disposing or converting, bringing into or removing the property from Hong Kong and using the property to borrow money or as security.[5] Various court judgments have already rejected the argument that the test of “having reasonable grounds to believe” is contrary to the presumption of innocence.[6] It is also well established in case law that in money laundering prosecutions, it is not necessary to prove the predicate offence;[7] to specify the conduct of the underlying offence;[8] or to prove the illicit provenance of the property.[9] In all criminal cases, a defendant is presumed innocent until convicted of the offence, and money laundering enjoys no exemption from this steadfast requirement.

Money laundering is an insidious crime. In the interests of justice, it is imperative that money launderers are prosecuted according to globally accepted standards and penalized appropriately on conviction. By removing the criminals’ ill-gotten gains, we hope to deter others from offending similar crimes. Such measures are the only adequate response to the public’s abhorrence of the crime. As prosecutors, we are committed to upholding the anti-money laundering law by prosecuting the offence under an established policy which conforms to international standards. In addition to upholding the rule of law, the prosecution of money laundering can safeguard Hong Kong’s position as a major financial and regional centre, by making it difficult for criminals to wash the proceeds of their crimes here. It is hard to argue why this position should not be maintained in the interests of justice and the welfare of the community. Any allegation that the rule

位。從維護公義及社會福祉着眼，我們不能不堅守這立場。至於所謂檢控洗錢罪行令法治受到侵蝕或損害，實在是毫無根據。

如果我們認同香港必須設有貫徹一致和嚴格的打擊洗黑錢制度，接下來的問題自然是：我們有何工作成果？我們是否做得足夠？下列數字不言而喻。

of law has been eroded or compromised in our prosecution of money laundering is without basis.

If we accept that we need a consistent and stringent anti-money laundering regime in Hong Kong, the next question naturally arises: What is the result of our work and have we done enough? The following figures speak for themselves.

年份 Year	可疑交易報告數目[10] No. of Suspicious Transaction Reports[10]
2008	14,838
2009	16,062
2010	19,690
2011	20,287
2012	23,282

年份 Year	洗錢案件數目 No. of Cases of ML	已裁定洗錢罪名成立的案件數目 No. of cases of conviction in ML	已裁定洗錢罪名成立的人數 No. of persons convicted of ML
2008	231	196	248
2009	258	251	307
2010	242	279	360
2011	290	199	246
2012	441	140	166

年份 Year	限制資產數額（港幣）（百萬元） Amount of Assets Restrained (HK$)(million)	限制令數目 No. of Restraint Orders	沒收資產數額（港幣）（百萬元） Amount of Assets Confiscated (HK$)(million)	沒收令數目 No. of Confiscation Orders
2008	404	16	20	9
2009	1,733	15	120	13
2010	348	17	104	11
2011	1,370	31	1,784	16
2012	1,387	36	50	17

過去五年，尤其是 2008 年金融危機（即全球金融體系崩潰、馬多夫投資騙局及雷曼兄弟倒閉事件）後，可疑交易報告及洗黑錢刑事案件的數目持續上升。這連串金融醜聞令金融業對可疑洗黑錢交易提高警覺。執法機關亦加強了調查這類貪婪罪行的能力。當罪犯被起訴和定罪後，當局便會提出沒收申請。近年來，當局發出的限制令和沒收令的數目，以及限制和沒收款額，均平穩上升。這些

During the past five years, the number of suspicious transaction reports and criminal cases in money laundering has been on the rise, especially in the wake of the 2008 financial crises, namely, the global financial meltdown, the Madoff investment fraud and the collapse of the Lehman Brothers. This string of tainted money scandals has made the financial industry more vigilant to suspected money laundering transactions. The law enforcement agencies have also enhanced their capacity in the investigation of this acquisitive crime. Confiscation applications were made after prosecution and conviction of the criminals. Recent years have seen a steady acceleration in the number of restraint orders and confiscation orders, and in the amount of money restrained and confiscated. The result of our work as shown in these statistics should somehow help rebuild the public's faith in the integrity of our financial system.

A number of recent cases handled by the Proceeds of Crime Section of the Prosecutions Division illustrate why we need to take a more proactive approach in our fight against money laundering. In December 2009, we obtained a confiscation order against a defendant for $50 million which represented proceeds of the offences of keeping vice establishments and money laundering.[11] The defendant had accumulated a huge profit by running three saunas in which masseuses provided sexual services. In May 2010, we confiscated $84.7 million in a case involving the laundering of proceeds generated from illegal bookmaking in Macao SAR.[12] In another case in 2011, we confiscated $1.57 billion from a Taiwanese absconder who had channelled the proceeds of unlawful gambling from Taiwan and the Mainland into Hong Kong.[13]

In November 2012, a defendant from the Mainland was convicted of laundering $13 billion worth of deposits received in bank accounts under his control in Hong Kong.[14] The evidence showed that victims from Taiwan were defrauded into remitting money into his accounts. In January 2013, five defendants were convicted of the offences of conspiracy to export unmanifested cargo and money laundering involving the smuggling of marked oil.[15] The amount of money laundered was over $2.6 billion, and $250 million worth of assets had been restrained pending confiscation. The confiscation applications of the last two cases will be heard later in 2013.

The amount of money involved in these confiscation applications is enormous. All illicit proceeds confiscated from the defendants will go directly to the General Revenue. But just imagine the extent

統計數字表明了我們的工作成果，相信這有助重建公眾對香港金融體系穩健程度的信心。

刑事檢控科罪犯得益組近期所處理的多宗案件，正正說明我們為何需要採取更積極的措施打擊洗黑錢活動。

在 2009 年 12 月，我們針對一名被告取得沒收令沒收了 5,000 萬元，這款額是經營賣淫場所及洗黑錢罪行的得益。[11] 該案被告透過經營三間有女按摩師提供性服務的桑拿浴室積累了巨額利潤。在 2010 年 5 月，我們在一宗涉及清洗在澳門特區非法收受賭注活動得益的案件中沒收了 8,470 萬元。[12] 在 2011 年的另一宗案件中，我們向一名台灣潛逃者沒收 15.7 億元，該人把來自台灣及內地非法賭博的得益引入香港。[13]

在 2012 年 11 月，一名來自內地的被告被裁定在香港清洗他所控制的銀行帳戶收到的 130 億元存款罪名成立。[14] 證據顯示，來自台灣的受害者被詐騙匯款到他的帳戶。在 2013 年 1 月，五名被告被裁定串謀輸出未列艙單貨物及涉及走私紅油活動的洗黑錢罪罪名成立，[15] 案中洗黑錢金額超過 26 億元，當局限制了價值 2.5 億元的資產，以待沒收。最後兩宗案件的沒收申請將在 2013 年稍後時間在法院進行聆訊。

這些沒收申請均涉及巨額款項。被告被沒收的非法得益，會全數直接撥入政府的一般收入帳目。試想如果罪犯能保留這些得益並轉而用於更多非法活動上，整體社會會蒙受多大的傷害。把如此巨額的犯罪得益沒收，無疑等同拆除了一個潛在社會裏隨時可爆發的計時炸彈。

鑑於香港近年在打擊洗錢方面的成就，打擊清洗黑錢財務行動特別組織（“FATF”）在 2012 年 10 月調升香港的評級，把香港從該組織的跟進程序名單中剔除。此外，隨着《打擊洗錢及恐怖分子資金籌集（金融機構）條例》（第 615 章）在 2012 年 4 月制定，加上《聯合國制裁條例》（第 537 章）及《聯合國（反恐怖主義措施）條例》（第 575 章）分別在 2012 年 3 月及 2012 年 7 月作出修訂，本港的打擊洗黑錢制度可進一步與現行的國際標準接軌。

我們固然不應只就目前這些成果而感到自滿，亦不應怯於承認本港打擊洗黑錢制度有不足之處。例如，只有法例附表指明的

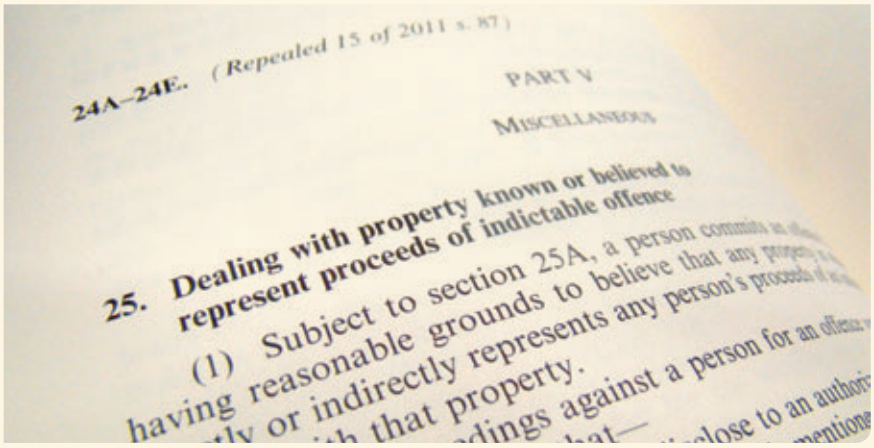
of damage that could have been done to the community as a whole had the proceeds been retained by the criminals and re-invested into more illegal activities. Confiscation of criminal proceeds of that magnitude has the undeniable effect of detonating ticking time bombs in the criminal underworld.

In recognition of Hong Kong's success in tackling money laundering in recent years, in October 2012 the Financial Action Task Force (FATF) upgraded Hong Kong's rating by removing Hong Kong from its follow-up process list. The enactment of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap. 615 in April 2012, together with the amendments of the United Nations Sanctions Ordinance, Cap. 537 and the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 in March 2012 and July 2012 respectively, has also brought our anti-money laundering regime further in line with the prevailing international standards.

Of course, we should not be too complacent about our achievements so far and we should not be shy to admit to inadequacies in our anti-money laundering regime. For example, the court's powers to restrain and confiscate property are confined to the schedules of specified offences and magistracies have no power under the existing statutory framework to order confiscations, despite the vast number of criminal cases they hear.

Some critics also view our asset recovery regime as lagging behind other developed jurisdictions such as the United Kingdom, the United States, Australia, South Africa and certain provinces of Canada in its development of a civil-based forfeiture law. In Hong Kong, with the exception of the absconder's proceedings and the deceased person's proceedings, all confiscation orders are conviction-based. If the prosecution is unable to secure a conviction of a scheduled specified offence against a defendant, or if the conviction is quashed on appeal, there will be no legal basis to apply for confiscation, even in cases where the undisputed evidence shows that the defendant has financially benefited from the activity under charge. This scenario is obviously undesirable and it poses as a big legal impediment to our fight against money laundering.

Under the current regime, the value of the assets under restraint sometimes depreciates significantly pending the confiscation application, which may be years after the making of the restraint order. There have also been complaints from the defence that assets are restrained for an inordinate period of time before any hearing is held for a confiscation application, which in turn depends on the conclusion of the criminal trial or the appeal. On the other hand, a civil-based forfeiture regime is effective and flexible as there is no need to wait for a conviction, the process of securing which is often cumbersome and protracted. In most forms of civil forfeiture, the application is aimed at specific property or criminal instrumentality but not against a person. It allows flexibility in applying for forfeiture against offenders who have absconded or disappeared. The benefits of civil-based forfeiture are obvious and considerable from the prosecutor's



罪行，法院才可行使限制和沒收財產的權力，而裁判法院即使聆訊大量刑事案件，在現行法定框架下，亦沒有權力就沒收事宜作出命令。

有些批評者認為，在發展以民事法為基礎的沒收法律方面，本港的追討資產制度落後於其他發展成熟的司法管轄區（例如英國、美國、澳洲、南非及加拿大若干省份）。在香港，除了涉及已潛逃或已去世人士的法律程序外，所有沒收令都是以定罪為基礎。假如控方無法就某項表列指明的罪行提出充分證據令被告入罪，或者定罪判決在上訴後撤銷，控方便沒有法律理據提出沒收申請，即使案中有不被爭議的證據顯示被告從控罪所涉及的活動中獲得經濟利益。這種情況顯然是不理想，而且對我們打擊洗黑錢工作構成頗大的法律障礙。

在現行制度下，限制令頒下後，可能要經過數年才能提出沒收申請，在這段期間，被限制資產的價值有時會大幅貶值。過往辯方亦曾投訴，由於提出沒收申請須視乎刑事審訊或上訴審結的時間，所以資產被限制一段頗長時間後，法庭才會就沒收申請進行聆訊。反觀以民事法為基礎的沒收制度，由於無須等候往往程序繁瑣和曠日持久的定罪裁決，因而靈活有效。而就大多數民事沒收的個案，沒收申請都是針對指明財產或犯罪工具，並非針對個人。這種做法可更靈活針對潛逃或失踪犯人提出沒收申請。從檢控人員的角度來說，以民事法為基礎的沒收制度，明顯有很多好處。儘管如此，實施以民事法為基礎的沒收制度，定會在對人權的影響和如何與現行以定罪為基礎的架構融合方面，引起激烈討論。

誠然，這些問題都是不容易逾越的障礙，但洗黑錢活動正以前所未有的速度擴張，我們向罪犯追討犯罪得益的能力亦必須相應加強。我們已向罪惡世界宣戰。既然我們的犯罪敵人永不知足，我們本身豈可知足。如果我們不敢衝破現有規限，我們便無法開拓新領域。FATF 在 2014 年會進行每兩年一次的更新情況工作，並在 2015 年對香港進行相互評核，這兩項工作都快將展開。我們決意證明香港負責打擊洗黑錢的隊伍是全球最有效和最精銳的部隊之一。或許我們距離這目標只有一步之遙，但我們確實需要拿出勇氣，悉力以赴，奮力邁出這一步，把我們現有的動力和理念轉化成事實。

point of view. But the implementation of a civil-based forfeiture regime will necessarily arouse heated debates on its human rights implications and how it integrates into the existing conviction-based structure.

These issues are certainly not easy hurdles to overcome. Yet the money laundering industry is expanding at unprecedented speed and this calls for a corresponding expansion of our capacity to recover illicit profits from the criminals. We already have thrown down the gauntlet to the criminal world. Our criminal adversaries are never quite satiated, and there is no reason why we should be. We cannot reach new ground if we are afraid to break the existing boundaries. The FATF biennial update in 2014 and the Mutual Evaluation for Hong Kong in 2015 are just around the corner. We are determined to prove that the anti-money laundering task force in Hong Kong is one of the most successful and progressive organizations on an international level. Maybe we are just one step away from that destination, but we do need committed courage to make a bold step to turn our current momentum and vision into reality.

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適當的語句：談淺白英語與刑事檢控科
Sensible Sentencing: Plain English and the Prosecutions Division

Simon Alderson 博士
英國劍橋大學文學碩士及哲學博士、香港大學英文學院名譽教授、Cygnet Communications Limited 執行董事

By Dr Simon Alderson MA, PhD (*Cantab.*),
Honorary Professor, School of English, University of Hong Kong; Managing Director, Cygnet Communications Limited.

法律行業使用的英語，長久以來給人的評價都是毀多於譽；無獨有偶，政府部門使用的英語，往往艱澀難明，屢受詬病。而當律師加入政府後，兩種特質混和，可能貽害更深！

政府及法律英語的新近發展

近年來，不少政府都採取措施，提升政府人員的英語水平，並擺脫大部分政府公文的固有枷鎖，不再使用過往艱澀難明的措辭。英國在一九七零年代推行淺白英語運動，促使政府的通訊常規和取向出現廣泛轉變。在美國，奧巴馬總統在 2010 年簽署淺白英語法案，要求所有聯邦法例以一般人民能理解的英語撰寫，而不夾雜術語或複雜的類似法律用語。現時，美國聯邦政府網站如 www.plainlanguage.gov，都載有大量關於使用淺白英語寫作的秘訣及資源，以供美國政府的撰寫人員參考。澳洲、新西蘭、加拿大及南非亦推動類似工作。在香港，這工作剛開始受重視。

近年來，世界各地使用英語的司法管轄區也紛紛着手處理法律英語潛藏的陷阱和風險。他們認同，法律專業人員必須能夠清晰和有效地溝通，即使是（或者特別是）涉及最重大利害關係和最錯綜複雜的問題，也應如此。

美國密歇根州大律師委員會轄下的淺白英語小組委員會，自 1984 年以來一直向律師派發闡釋淺白英語的材料，便是其中一例－見 http://www.michbar.org/generalinfo/plainenglish/home.cfm。法律辭典 *Black's Law Dictionary* 的主編 Bryan A. Garner，亦出版了數本具影響力的淺白法律英語書籍，包括 *The Elements of Legal Style* (2002 年第 2 版）及 *Legal*

The legal profession has attracted comments about its English – mostly negative ones – for hundreds of years, and government English too has been a longstanding target of criticism for its impenetrability. Put the lawyers into government and there is the potential for a toxic mix!

Recent changes in government and legal English

Many governments have taken steps over the past few years to raise the standards of the English used by government employees and cast off the shackles of impenetrability that once characterized much government writing. The Plain English Campaign, launched in the 1970s in the UK, takes credit for widespread changes to government practice and thinking about communication. In the US, in 2010 Barack Obama signed the Plain English Bill, which required all federal legislation to be written in English that ordinary citizens could understand, without jargon or complicated quasi-legal phraseology. Nowadays, federal websites like www.plainlanguage.gov offer US government writers a wealth of tips and resources for adopting Plain English in their writing. Similar drives have taken place in Australia, New Zealand, Canada and South Africa. They are now just beginning to find receptivity in Hong Kong.

Around the world English-speaking jurisdictions have over recent years begun addressing the pitfalls and perils of legal English too. They are recognizing the need for legal professionals to be able to communicate clearly and effectively even (or perhaps especially) when the stakes are highest and the issues most complex.

The State Bar Committee of Michigan, for instance, has a Plain-English Subcommittee which has been distributing Plain English materials for lawyers since 1984– see http://www.michbar.org/generalinfo/plainenglish/home.cfm. Bryan A. Garner, editor of *Black's Law Dictionary*, has published several influential books on Plain English in law, including *The Elements of Legal Style* (2nd edition, 2002); and *Legal Writing in Plain English* (2001). Increasingly, the ability to draft legal documents of all kinds in Plain English is becoming not the exception but the rule.

In the rest of this article, I survey a few simple and effective ways that legal writers in the Prosecutions Division and beyond can embrace the principles of Plain English without sacrificing the precision and subtlety of argument required in the law. In developing the suggestions below, I trawled through a large number of English documents drafted by Prosecutions Division lawyers (Submissions and Statements of Facts) to identify the areas where Plain English could most profitably be introduced.

Vocabulary choices

The law is notorious for its use of vocabulary that is uncommon or unknown in ordinary English. Archaic words are one example; they are expressions that were once common but are now rare or obsolete, such as *the aforesaid* and *the said* and *the material place/time*. Latin expressions (*inter alia, modus operandi*) is another, and bring greater risks, as witnessed by the writer who wrote "Spiritual blessing continued to be the most popular modus operandum" without realizing that *modus operandi*

Writing in Plain English (2001 年)。對於能夠以使用淺白英語草擬各類法律文件，現時已日益成為常規，而非特殊要求。

在本文下列各段，我會提出幾個簡單有效的方法，既可符合淺白英語原則，又不會損及論述法律觀點所需的精確性和細緻筆觸，讓刑事檢控科以至其他科別的撰寫法律文件人員參考。我在擬定下列建議時，曾閱覽刑事檢控科律師所擬備的大量英語文件（書面陳詞及事實陳述書），以找出最宜使用淺白英語的範疇。

選擇詞彙

法律以使用日常英語少用或根本不使用的詞彙見稱。古舊字詞便是一例，它們曾經是常用語，但現在已屬罕見或過時，例如 *the aforesaid*（前述的）、*the said*（所述的），以及 *the material place/time*（關鍵地點／時間）。另一例子而風險更大的是拉丁文用語（*inter alia*（*其中包括*）、*modus operandi*（*行事手法*））。正如某律師曾寫道："Spiritual blessing continued to be the most popular modus operandum"（祈福繼續是最普遍的犯罪手法），殊不知 *modus operandi* 這名詞本身已是單數，單此一例，可見一斑。現時，世界各地的撰寫法律文件人員都日漸捨棄這類用語，而代之以更切合時宜和更易懂易明的用語。

古舊詞彙亦延伸至古舊稱謂，就這方面，很多撰寫法律文件人員都沒有一致看法。撰寫人早應重新思量，究竟是否仍有需要使用"the Learned Judge"（法學精湛的法官）或"my Learned Friend"（法學精湛的同儕）等用語，以及修改和更新"the Respondent humbly submits ..."（答辯人謙恭地提出）等傳統用語。

除了使用一些特定字眼和用語外，造成不少法律文件有欠清晰的最常見障礙，是普遍累贅冗長的文體。這些文章的句子不但過長，使讀者難以消化，還不必要地使用重複、冗贅和讀者不易理解的詞句，例如 *and/or*（及／或）。

把冗長句子簡化，方法之一是多借用專為減少重複詞句而設的英語特色－代名詞。某作家曾評論說："律師 …… 差不多都是例行避用代名詞，即使在不可能有歧義的情況下亦然"，這確是我閱覽的香港文件的真實描述。代名詞只要運

is already singular. Legal writers around the world are jettisoning these kinds of expressions in favour of more current and recognizable ones.

Archaic vocabulary also extends into archaic terms of address, an area where many legal writers are inconsistent. It is high time writers reconsider whether expressions such as 'the Learned Judge' or 'my Learned Friend' are still necessary, and revise and update traditional phrases like 'the Respondent humbly submits...'

Apart from issues about specific words and phrases, the most common impediment to clarity in many legal documents is a general over-blown wordiness. This shows itself not only in lengthy sentences that are hard for readers to process, but also in the use of unnecessary repetitions, tautologies, and non-reader-friendly expressions such as *and/or*.

One way of streamlining wordy sentences is to rely more on features of English especially invented to reduce repetition–pronouns. One writer has commented that "Lawyers… avoid pronouns almost routinely, even where no ambiguity is possible", and this is certainly true in the Hong Kong documents I have read. Sensible pronoun usage will transform wordy, over-repetitive documents, so long as their reference is always totally unambiguous. The writer of the following passage could work wonders by introducing a few pronouns:

> D's wife followed D and grasped D to prevent him from harming PW1. However, D managed to free himself from D's wife and punched PW1's head with his right fist. PW1 and D then entered into a struggle and D fell on the ground.

Another simple Plain English expedient that helps reduce wordy and complex sentences is to break up the frequent clusters of nouns that are much loved of government writers ('nominalizations') and replace them with more dynamic verb-based constructions. Any reader will tell you that it is easier and more enjoyable to read about how "The Magistrate adopted a starting point of 12 months" than about "the adoption of the 12 months' starting point by the Magistrate".

Sentence connectives

Short sentences on their own, however, are not a substitute for effective sentence construction and organization. Plain English is not just about reducing the quantity, but improving the quality too.

Short sentences can be strung together but still leave readers grasping for their connection and significance. Consider these two sentences:

> The Police were called. AP fled.

What exactly is their relationship? The failure to explain their logical connection explicitly leaves more than one possibility available for the reader. English contains many sentence connectors that enable writers to map out the explicit links between one sentence and the next, but typically these are heavily underused by legal writers. They include explicit markers showing that the information that follows is additive (e.g. *in addition, moreover, furthermore*), adversative (*however, on the other hand, nevertheless*), temporal (*following this, shortly after, a few minutes later*), or causal (*therefore, as a result, consequently*). The habit of adding such sentence connectors into narratives not only helps the reader significantly, it can also assist the writer in understanding the links between each part of his or her draft.

The content of sentences

A few simple Plain English principles can go a long way to streamlining the average legal sentence. Sentences work best when they contain one primary piece of information to communicate, rather than three or four. They also work best when the main verb is located towards the beginning of the sentence, enabling the reader to get an instant grasp of the main content of the sentence. In the following sentence, the failure to follow these guidelines results in a sentence that would tax the sharpest judge:

> In order to consider whether A1 – A3 had ensured that, so far as was reasonably practicable, suitable and adequate safe access to and egress from every place of work where the construction work was being carried out, was provided and properly maintained, it was necessary for the learned magistrate to consider whether it was foreseeable that PW1

用得宜，只要所參照的名詞絕無含糊之處，我認為可以把冗長和過多重複詞句的文件改頭換面。以下一段文字的撰寫人只要換上幾個代名詞，便可使該段文字脫胎換骨：

> D's wife followed D and grasped D to prevent him from harming PW1. However, D managed to free himself from D's wife and punched PW1's head with his right fist. PW1 and D then entered into a struggle and D fell on the ground.
>
> （被告的妻子跟隨被告，並抓着被告，以阻止他傷害控方第一證人。不過，被告掙脫了被告的妻子，並用右拳擊打控方第一證人的頭部。控方第一證人與被告接着發生糾纏，被告倒地。）

另一個使用淺白英語以減少冗長和複雜句子的簡單折衷方法，是把政府撰寫人愛用的名詞詞組（名詞化）拆解，代以更生動活潑的動詞結構。把"The Magistrate adopted a starting point of 12 months（裁判官以 12 個月為量刑起點）"與"the adoption of the 12 months' starting point by the Magistrate（裁判官所採用的 12 個月量刑起點）"比較，任何一位讀者都會認同，閱讀前者會較容易和更輕鬆。

句子連接詞

然而，短句本身並不能取代有效的句子結構和組織。淺白英語除言簡外，還要意賅。

有時候把若干短句串連起來，讀者仍可能無法掌握句子相互之間的關聯和重點。請參看這兩句：

> The Police were called. AP fled.
> （警方接報。被捕人逃走。）

這兩句之間究竟有何關係？由於句子沒有明確解釋兩者間的邏輯關聯，故此產生多於一個可能性給讓讀者解讀。英語中有許多句子連接詞，可用以顯示句與句之間的確實關聯，但撰寫法律文件人員慣常甚少使用。這些連接詞包括明確的標記，顯示下接資料屬附加的（例如：*in addition*（另外）、*moreover*（此外）、*furthermore*（再者））、反意的（*however*（不過）、*on the other hand*（另一方面）、*nevertheless*（可是））、表示時間的（*following this*（接着）、*shortly after*（不久之後）、*a few minutes later*（數分鐘後））或表示因果的（*therefore*（因此）、*as a result*（結果）、*consequently*（最終））。撰寫人如能在敍事時加上這些句字連接詞，不但對讀者大有幫助，更可使撰寫人弄清他的擬稿各部分之間的關連。

句子內容

要簡化一般法律語句，只要掌握幾項簡單的淺白英語原則，便可無往不利：每句只傳達一個基本信息，而非三數個信息，這可達到最佳的傳意效果；主動詞置於靠近句子起首的位置，讓讀者一開首便掌握句子主旨，也可達到最佳的傳意效果。在下述句子中，撰寫人並沒有依循這些指引，要理解這句，即使是最精明的法官，也可能要煞費思量：

> In order to consider whether A1 – A3 had ensured that, so far as was reasonably practicable, suitable and adequate safe access to and egress from every place of work where the construction work was being carried out, was provided and properly maintained, it was necessary for the learned magistrate to consider whether it was foreseeable that PW1 would work on level 2 and/or the red beam.
>
> （在考慮第一上訴人至第三上訴人曾否確保在合理切實可行的範圍內，盡量在正在進行該建築工程的每個工作地方，提供適當和足夠的安全進出口，並妥為維修該等進出口，法學精湛的裁判官有需要考慮是否可以預見，控方第一證人會在第二樓層及／或紅色橫樑上工作。）

讀者或許想研究如何改寫這句。但最明顯不過是只需遵循簡單的清晰原則便可：把繁複的句子分拆成較短的句子，把塞進每句的信息減少，確保主要信息置於句子的較前部分，而不是推後至一個或多個冗長從句的結尾。

講故事

刑事檢控科律師擬備書面陳詞和事實陳述書時，不僅經常需要陳述他們的論點和提出建議，也要說說故事。講故事是一門藝術，這不是每個人與生俱來的本領，故值得在這裏介紹一些技巧，以助清晰、有效甚至繪聲繪色地述事。

> would work on level 2 and/or the red beam.

Readers might like to consider how they would redraft such a sentence. But the simple principle of clarity is plain: reduce the amount of information that is stuffed into any individual sentence by splitting bulky sentences into smaller ones, and make sure the key information is presented upfront for the reader, rather than delayed until the end of one or more lengthy subordinate clauses.

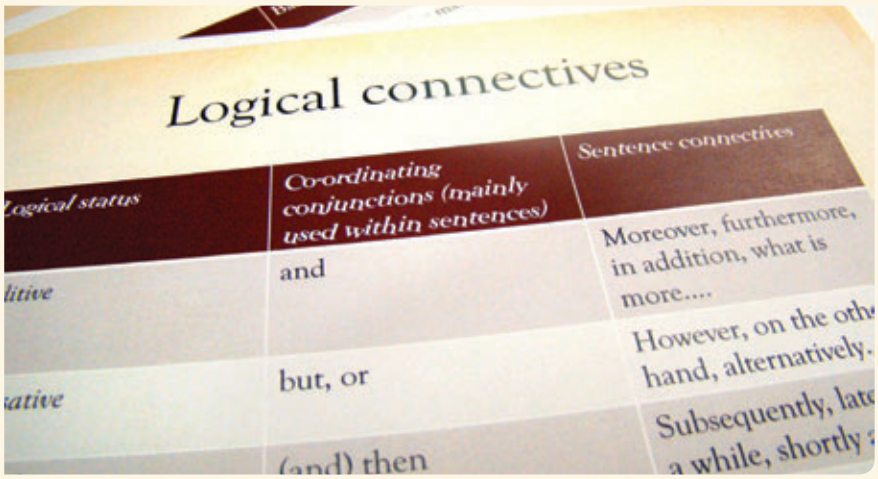
Telling the story

Prosecutions Division lawyers, when drafting Submissions and Statements of Facts, often find themselves not only having to present arguments and make recommendations but also to tell a story of some kind. Storytelling is an art that doesn't come naturally to everyone, so it's worth mentioning a few skills that make for clear, effective and even dramatic narratives.

One is the skill of setting the scene. In any story, a reader understands fastest and follows most easily if they know in advance the core characters and situation, and their relevance to each other. This is where topic sentences and background paragraphs come in. Narratives of events should start with a background paragraph that situates the narrative within a context, and that includes a topic sentence that summarizes the nature of the case and alerts readers to the relevance of everything that follows. It is surprising how often topic sentences are missing from Submission documents. A text may typically begin "On 3 January 2013, WP1 parked his car at location X." But is this a Submission about PW1, about his car, or about location X? A simple topic sentence such as "This case concerns the theft of a private car" clarifies the question immediately.

The uncertainties that arise when this isn't done can be seen from the following opening of a Submission:

1. (D1) is the husband of (D2).
2. On 26-9-2008, the police carried out an operation in the Crazy Club Karaoke Nightclub (the "Nightclub") and some accounting documents of the Nightclub were seized. […]



技巧之一是陳述背景。任何一個故事，讀者如果能夠預先知道故事的主要人物、處境以及各元素的相互關係，便可快速地理解故事，並容易掌握情節。法律文件應設有點題句子及背景段落，其理在此。敘述事件，開首應以背景段落交代事件的來龍去脈，當中須加上點題句子，概述案件性質，並提醒讀者隨後出現的所有事物的關聯。我閱讀的陳詞文件總是沒有點題句，實在令人費解。一份文件往往可能這樣起首："On 3 January 2013, PW1 parked his car at location X."（2013年1月3日，控方第一證人把他的汽車泊在地點X。）然而，這份陳詞究竟是關於控方第一證人、他的汽車，還是地點X呢？一句簡單的點題句，例如"This case concerns the theft of a private car"（這是一宗關於一輛私家車被盜竊的案件），即可把這問題弄清楚。

下文載述某份陳詞的開首部分，由此可以看到沒有如上述方法處理而產生的含糊情況：

1. (D1) is the husband of (D2).
((第一被告)是(第二被告)的丈夫。)
2. On 26-9-2008, the police carried out an operation in the Crazy Club Karaoke Nightclub (the "Nightclub") and some accounting documents of the Nightclub were seized. [...]
(2008年9月26日，警方在Crazy Club卡拉OK夜總會("該夜總會")展開行動，檢取了該夜總會的若干會計文件。[……])

好故事決不會這樣起首，原因是文中提供的資料互不關聯，讀者根本無法把資料貫連起來。背景段落可提供關鍵資料的概要，以幫助讀者理解隨後敍述的故事情節，並說明各情節之間的關聯。

分段與段落結構

好文章又應具備層次分明和容易理解的組織結構，加上切中要點的標題和副題，並在內文明確說明目的，以加強理解。這做法可讓讀者掌握文章的脈絡，洞悉文章的整體方向和目的，並對大綱了然於胸。

標題當然要傳意準確，讀者通常只能依據標題，把文章概括分成不同結構部分。但除此之外，好的敍事還包括David Stratas法官曾提及的"先提論點的闡述方式"。他寫道：

> 在陳述事實的部分，考慮貫徹使用"先提論點"的闡述方式：在每一段落及每一分段的開首，都須先道出論點。須令法官在審閱你的陳詞時，時刻明瞭有關段落的論據及其前文後理。這種闡述方式可令法官對你的陳詞灌注信心和說服力，並讓法官處處領會你所闡述的重點。

結語

假如淺白英語確實隱含一個要旨，那就是為讀者設想，這須要考慮公文會否為讀者設置哪些障礙，妨礙讀者理解、領會或受益。這些障礙形形式式，影響語文的不同層面，涵蓋範圍可小至文法詞彙，亦可廣及句子運用、段落組織及鋪排，甚至整份文件的布局。

我們如果能夠了解讀者（包括忙碌的法官）的難處，便會另選寫作技巧和策略，改變我們的寫作方式，以撰寫更簡潔達意和易讀易明的法律文件。

Good stories don't start like this, because the information given here is unconnected and the reader has no way of linking it. Background paragraphs take the time to sketch out all the key information needed to understand the story that follows, and explain how it is connected.

Paragraphs and their organization

Good documents should also have clear and easy-to-understand organizational structures, clearly marked by strong headings and sub-headings and reinforced by explicit statements of purpose in the text itself. These allow readers to orientate themselves, to get a sense of the overall direction and purpose of the document, and to know what to expect.

Headings should of course be informative, as often these represent the only way that readers can organize the document into larger structural parts. But in addition, good narratives will include what Justice David Stratas calls 'point first exposition'. He writes,

> Consider adopting "point first" exposition through your facts section: at the beginning of each section and sub-section. Judges need to know at all times exactly where you've been in your submission, where you are presently, and where you are about to go. This instils confidence and reassurance, and allows judges to absorb the significance of what you are telling them as they encounter it.

Conclusion(s)

If there is an underlying theme of Plain English, it is that of taking consideration for readers. That involves thinking about the kind of obstacles that written documents can place in the way of readers so as to make it hard to understand, follow or enjoy them. There are many such obstacles and they operate at many different levels of language, from small-scale levels of grammar and vocabulary to larger-scale ones of sentence handling, the organization and presentation of paragraphs, and even the layout of entire documents.

By understanding what readers–including busy judges–struggle with, we can select skills and strategies that will change the way we write and create documents that are more concise, focused, and accessible.

現代檢控人員該如何定位
What it Means To Be a Modern Prosecutor

副刑事檢控專員黃惠沖先生
By Mr Wesley Wong, Deputy Director of Public Prosecutions

去年夏天，我到劍橋第三十屆國際經濟罪行研討會演講，呼籲必須以我所說“全方位迎擊”、不分疆界地對付罪犯。當時聽眾席上除了學者，也有法官、檢控官、辯護律師、議員，以及調查和執行法規人員等。我演說的主題是，疆界是人為的，我們不應該讓疆界阻礙執法部門與檢控機關之間緊密的跨境行動。這似乎特別切合當前的情況，不法分子利用科技的發展犯罪獲益，這類的犯案機會在數十年前是難以想像的。

那次研討會後，我開始思考，究竟一個現代檢控人員應該如何定位？近日，刑事檢控專員薛偉成資深大律師出席“現代社會的檢控官：維護法治及尊重權利和自由”公開研討會，也談及這個話題[1]。有句說話也許是老生常談，但在此值得重提，就是檢控人員是擔當秉行公義之職，每個檢控人員必須時刻持守社會所期望的最高標準。

薛專員在不同場合一再強調，在作出檢控決定時，要充分考慮保障人權。但是作為一個現代檢控人員，肯定非僅此而已。舉例說，薛專員在《2011 年刑事檢控科工作回顧》的〈刑事檢控專員的序言〉中強調，為引導首次犯罪者遠離罪行，不再以身試法，我們必須採取較積極的措施，確保他們得到恰當的體恤。在適當的情況下容許罪犯“簽保”而不尋求定罪，可給予他們一個改過自新的機會，能帶來重要而良好效果。對於案中罪犯，他們仍須在法庭公開承認案件及犯罪的事實，並向法庭承諾在指定期間內守行為或遵守法紀。

走入社羣對檢控人員來說同樣重要，而接觸學童是第一步。本科 2012 年首次舉辦檢控週，好評如潮。2013 年，檢控週定於緊隨學校期終考試後至放暑假前的一段日子舉行，以免對學校師生造成不便。

在以專業身分履行公職時，檢控人員亦須有我稱之為“360 度的取態”。現今的檢控

When I spoke at the 30th Cambridge International Symposium on Economic Crime last summer, I advocated the need for what I called an “all-front response” to criminals without boundaries. My audience comprised not only academics but also judges, prosecutors, defence lawyers, legislators, investigators and compliance officers, amongst others. My main theme was that artificial boundaries must not be allowed to prevent close cross-border operation between law enforcement agents and prosecutorial authorities. This seems especially relevant in the face of advances in technology which have afforded perpetrators of crime opportunities to profit that had not been thinkable just a couple of decades ago.

After the Symposium, I have started reflecting on what it really means to be a modern prosecutor. The Director of Public Prosecutions himself spoke on this in his recent public seminar, “A Prosecutor in Modern Society: Upholding the Rule of Law and Respecting Rights and Freedoms”.[1] At the risk of stating the obvious, it is worth repeating that each and every prosecutor is a minister of justice in his or her own right and must abide at all times by the highest standards expected of anyone in that calling.

The Director has sought to underscore on various occasions the need to give proper regard to the protection of human rights in making prosecutorial decisions. But being a modern prosecutor must mean more than just that. For example, in the Director’s Overview of last year’s issue, Mr Zervos, SC emphasized the importance of playing a more active role in ensuring that first-time offenders are treated with an appropriate measure of compassion in order to steer them away from crime and not into it. By giving a person a second chance, the suitable disposal of a case by way of a “bind over” without seeking a conviction can have a significant and salutary effect. In these cases, the offenders would still have to admit the facts of the case and their wrongdoing in open court and give an undertaking to the court to be of good behaviour or to keep the peace for a given period of time.

It is equally important for prosecutors to reach out into the community, and as a first step, to our school children. Our first Prosecution Week in 2012 was well received and we have, in order to avoid any conceivable inconvenience to teachers and students, scheduled 2013’s for just after the final examinations but before schools dismiss for summer.

As professionals discharging our public duty, prosecutors must also take what I may call a “360 approach”. It is no longer realistic for prosecutors to confine themselves to the practice of criminal law in the strict sense. A working knowledge of the law and practice of human rights should now be second nature to anyone making prosecutorial decisions and when appearing in court. The legality of legislative provisions, and aspects of the manner in which the criminal justice system operates, may be impugned by way of a constitutional challenge in its own right by invoking the supervisory jurisdiction of the Court of First Instance. This may be done by way of a separate application for judicial review[2] or as a collateral challenge brought during the course of the criminal prosecution itself.[3] Either way, prosecutors are expected to rise to the challenge by assisting the court in arriving at the correct decision and only at the proper forum.

In making decisions, prosecutors should not be fettered by the possible chilling effect of adverse costs awards or

人員不能只視自己為刑事法律執業律師。因為時至今日，所有作出檢控決定或上庭訟辯的人員，通曉人權法律與實踐的實務知識，已是應有的第二本能。對法律條文的合法性問題，以及刑事司法制度運作方式的種種方面，只要通過由原訟法庭行使司法監督權，便可質疑當中是否合乎憲法。要達此目的，一是另行申請司法覆核[2]，或是在刑事法律程序中提出質疑[3]。任何一種情況下，檢控人員都必須能夠面對挑戰，以協助法院達致正確的裁決和由最恰當的法院作出裁決。

檢控人員在作出決定時，不應因為可能被判須付訟費或被申索惡意檢控遭受損害賠償而有所遲疑。然而，這些結果可隨時出現，檢控人員應時刻警惕，這樣至少能確保我們的檢控決定是基於充分和正當的理據。即使法院作出下述決定的情況相對有限，這方面的敏銳觸覺仍應貫徹不變：法院批准針對不提檢控的決定所提出的司法覆核申請[4]，或者就罪行受害者或控方證人針對疏忽的申索判給損害賠償。

刑事程序不一定由提出檢控開始，而在裁決或定罪判刑結束。我這樣說是因為有時候早至臥底行動的籌備階段，或執法機關在尋求強制令以取得與調查相關的資料和材料時，檢控人員已須提供法律指引[5]。當局在罪犯被定罪後申請沒收犯罪得益，可能看來明顯不過，但其實早至行動公開前，檢控人員便須做足準備工夫，以確保在資產耗散前向法庭取得限制令[6]。

此外，若確定刑事司法制度有不足之處，檢控人員也應該如其他持份者一樣，提出制定適當的法律政策改革，並從中協助，以及提議落實改革所需的法例修訂。檢控人員的經驗和專門知識在過程中能起關鍵作用。因此，他們的角色必不僅在於被動地等待諮詢。公眾如今可預期，檢控人員會主動參與刑事法律改革的討論，正如在2012年11月的刑事法律研討會中，本科檢控人員與來自其他奉行普通法地方的頂尖法律人才，討論刑法改革[7]。下屆研討會將以「辯論」為名，預計在2013年下半年舉行。

公眾對檢控人員寄予厚望，故此加強培訓、善用科技和審慎管理現有資源對我們最是得益，尤其是當在增撥的資源未足以應付增加的工作量。本科在2012年推行了多項得力措施以提高工作成效。

potential claims for damages for malicious prosecutions. Nevertheless they should be constantly alert to such possibilities if only to ensure that their prosecutorial decisions are based on sound and proper grounds. The same degree of astuteness should be maintained even if the circumstances in which it will be open to the court to grant an application for judicial review against a decision not to prosecute,[4] or award damages in a claim for negligence brought by a victim of crime or prosecution witness are relatively limited.

The criminal process does not necessarily begin with the initiation of a prosecution and end with the entry of a verdict or, in the event of a conviction, sentence. I say this because input from a prosecutor may well be required as early as when an undercover operation is contemplated or when a law enforcement agent seeks a compulsive order to obtain information and material relevant to an investigation.[5] An application for the confiscation of proceeds of crime may seem obvious enough once a conviction is entered, but the ground work must be laid as early as before an operation turns overt to ensure that a restraint order will have been obtained before the assets have dissipated.[6]

In addition, when inadequacies are identified there is no reason why prosecutors should not, like other stakeholders in the criminal justice system, advocate and assist in formulating suitable policy reforms and propose legislative changes necessary for their implementation. The experience and expertise of prosecutors is crucial to the process. This is why they must not passively play the role of somebody waiting to be consulted. The public can now expect prosecutors to proactively take part in the debate on criminal law reform, as we did in November 2012 alongside some of the finest brains from the rest of the common law world, brought in for the Criminal Law Conference.[7] We expect the next conference, to be called "The Debates", to take place in the latter part of 2013.

It is when expectations run high on prosecutors that improved training, better use of technology and careful management of existing resources are to be most useful, especially if the additional resources allocated are not necessarily commensurate with the increased workload. A number of helpful initiatives have supported our work in 2012.

A Continuing Legal Education programme specifically commissioned for prosecutors has now been in place for two years and is set to continue. Our Criminal Advocacy Course manual has been revised and issued to new recruits and trainees to help them climb a learning curve as steep as it is possible to imagine.

It is hoped that a readily accessible archive of written submissions and advice saved in electronic form will also improve the quality of our work. A system simply known as "FAST",[8] by which straightforward and urgent cases are fast tracked for advice, is not so much about keeping us all occupied as allowing counsel of all ranks broadly assigned to either an advisory or advocacy role to carry out that of the others. The tasking of counsel to take up both advisory and advocacy duties, regardless of posting and the differing proportions of those duties, will enhance their performance in both. In the long run, it will also be conducive to their career development.

Despite some success in creating new posts through our annual resource allocation exercise ultimately permitted by funds so approved by the Legislative Council, the success of an independent and high quality prosecution service still needs the participation of competent barristers and solicitors from private practice to prosecute on fiat. In this respect, the Division has worked closely with both branches of the profession in maintaining and improving the quality of those whom we brief. The Joint Training Programme for young lawyers has continued to provide an opportunity for lawyers qualified for less than 5 years to take up prosecution work. From its inception until 28 July 2012,[9] 190 lawyers have benefitted from it. At the same time, selected junior counsel of less than 10 years' call may be placed on our understudy programme to assist experienced counsel in conducting long and complex cases. The fostering of a strong and independent local bar, as well as the introduction of overseas leaders in worthy cases, has been part of

我們特別為檢控人員展開一項持續法律進修課程，這項課程已舉辦了兩年，按計劃日後會持續舉辦。新入職律師和見習律師須要在我們可以想像的極短時間內熟習其工作，而為此我們也修訂了《刑事訟辯課程手冊》並派發給他們，幫助他們盡快上手。

本科把書面陳述書及法律指引電子版本存於資料庫，以方便各同事取閱，藉此提升本科人員的工作素質。本科還設立了簡稱“FAST”的法律指引制度[8]，讓科內人員能快速對性質簡單的緊急案件提供法律指引。這不是要我們忙過不停，而是讓各級律師在負責一般獲派的法律指引或訟辯職務之餘，還可參與另一範疇的工作。律師獲指派兼顧提供法律指引和訟辯的職務，不論本身崗位或獲派這些職務的比重如何，皆可提升他們在這兩個範疇的工作表現，長遠而言對他們的事業發展亦有裨益。

雖然在周年資源分配中本科成功獲批開設一些新職位，而立法會最終批給有關撥款開設新職位，但我們仍然需要具才幹的私人執業大律師和律師參與外判案件的檢控工作，以充實我們作為獨立及優秀檢控機關的服務。為此，本科與這兩系法律專業保持緊密合作，以維持並提高外判案件律師的素質。其中我們為年輕律師持續舉辦聯合培訓計劃，讓取得執業資格未滿 5 年的律師有機會從事檢控工作。這項計劃自推出至 2012 年 7 月 28 日[9]，已有 190 名律師受惠。此外，對於取得認許資格未滿 10 年的資歷較淺大律師，他們可獲挑選參加本科的實習計劃，協助富經驗的大律師處理一些耗時複雜的案件。本科向來的方針，是建立一支強大而獨立的本地大律師隊伍，並在合適的案件委聘海外大律師領訟，以確保我們能為香港提供優秀的檢控服務。

檢控人員要為公眾服務，而要贏得公眾敬重，必須有效地公開我們工作的資訊。因此，我們對自由新聞媒體從不視作我們需要面對的勢力，而是視為一個必須予法律保障的伙伴，協助我們向本地及國際社會傳達刑事事宜的相關資訊。

最後，秉持忠誠和正直，始終是指導檢控人員作出正確決定的基本原則。香港最後一任律政司馬富善在離任前，接受傳媒訪問，他向所有為香港特別行政區服務的政府律師寄語，提供法律指引不能因應方便。檢控官（在所有政府律師中）之所以存在，並非是為了方便，而是因為公眾期望他們能肩負維護法治的恰當職責。這是所有檢控人員在今天和將來都必須堅守的「基本法」。

our philosophy in ensuring a high quality prosecution service for Hong Kong.

Our prosecutors may only earn and command the respect of the public whom we serve when what we do is communicated to them effectively. We therefore never treat the free press as a force to be reckoned with, but instead as a partner deserving every protection of the law in imparting relevant information on criminal matters to the local and international communities.

Finally, honesty and integrity remain the core principles which should guide a prosecutor in making the right decision. When Jeremy Matthews, the last Attorney General of Hong Kong, was interviewed by the press before his departure, his last words for all government lawyers serving the Hong Kong Special Administration Region were not to give convenient advice. Public prosecutors, among all government counsel, exist not because it is convenient to have them but because the public expects them to play their proper role in upholding the rule of law. This is the basic law (with a small “b” and a small “l”) to which all prosecutors of today and of the future must adhere to.

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1. 2013 年 3 月 20 日，薛專員在香港大學法律學院比較法與公法研究中心向與會人士致辭。
The Director addressed the audience on 20 March 2013 at the Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong.

2. 見 *J 訴 律政司司長及另兩人*（高院憲法及行政訴訟 2013 年第 1 號）。
（網址：http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=86146&QS=%2B&TP=JU）。
See *J v Secretary for Justice and 2 Ors* (HCAL 1/2013) (at: http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=86146&QS=%2B&TP=JU)

3. 見*律政司司長 訴 海昇科技有限公司及其他人*（終院刑事雜項案件 2009 年第 1 號）。
（網址：http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_ frame. jsp?DIS=65861&QS=%28ocean%2Btechnology%29&TP=JU）。
See *Secretary for Justice v Ocean Technology Ltd and Ors* (FAMC 1/2009) (at: http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=65861&QS=%28ocean%2Btechnology%29&TP=JU)

4. 另見 *Ng Chi Keung* [2013]2 HKC 432（或高院憲法及行政訴訟 2013 年第 27 號）中所論述，可否對接管而又終止私人檢控的決定提出質疑。
（網址：http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=85992&QS=%2B&TP=JU）。
See also the possibility of a challenge against a decision to take over and end a private prosecution in *Re Ng Chi Keung* [2013] 2 HKC 432 or HCAL 27/2013 (at: http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=85992&QS=%2B&TP=JU)

5. 見 *A 訴 廉政專員* [2013] 1 HKC 334（或終院刑事上訴 2011 年第 9 號）。
（網址：http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=77503&QS=%2B&TP=JU）。
See *A v. Commissioner of the ICAC* [2013] 1 HKC 334 or FACC 9/2011
(at: http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=77503&QS=%2B&TP=JU)

6. 見助理刑事檢控專員何詠光另撰的一篇與犯罪得益有關的文章。
See separate article on proceeds of crime by Paul Ho, Assistant Director of Public Prosecutions.

7. 除本地法官、法律執業者及學者出席外，還有來自海外的嘉賓，包括 Anthony Hooper 爵士（前英國上訴法院法官）、新西蘭最高法院 Glazebrook 法官、英格蘭及威爾斯的刑法和證據法律專員 David Ormerod 教授。
Overseas guests included the Right Honourable Sir Anthony Hooper (formerly Lord Justice Hooper of the English Court of Appeal), the Honourable Madam Justice Glazebrook of the Supreme Court of New Zealand, and Professor David Ormerod, Law Commissioner for Criminal Law and Evidence, England and Wales, on top of local judges, practitioners and academics.

8. 在 2010 年 1 月 4 日設立，其運作一直在微調，以切合法律指引需求的迫切情況和合適律師人手的供應。
This has been in place since 4 January 2010 and its operation been the subject of fine-tuning to take into account the exigencies of the demand for advice and the supply of suitable counsel.

9. 截至 2013 年 2 月 23 日，受惠人數已達 247 名。
As on 23 February 2013, the figures already reached 247.

執行檢控　取信於民
Prosecuting with Public Confidence and Trust

刑事檢控專員薛偉成資深大律師
By Mr Kevin Zervos, SC, Director of Public Prosecutions

作為檢控人員，我們的工作毫不輕鬆，檢控事關重大，我們不管做什麼和怎樣做，都會與很多持份者有利害關係或對他們造成影響。我們稍有差池，便會令刑事司法制度受損，而市民大眾是所有持份者當中最重要的。因為我們畢竟是公職檢控人員，必須公平公正執法，為市民服務，我們的職責任重道遠。控方在處理案件時，有時會得不到市民的諒解或認同，甚至受到批評或引起公眾關注；無奈地，現實是只要有一宗案件嚴重失誤，便足以令市民對檢控機關失去信心和信任。要令市民對檢控機關有信心和信任，是要贏取得來的，而得到後更須努力加以維繫，這點再清楚不過。作為檢控人員，我們有時會低估了市民對我們工作的信心和信任的重要性。我們切忌墮入妄自尊大的陷阱，忘記了我們到底是為誰服務。公眾的信心和信任，既是衡量我們工作表現的標準，也是對我們工作的重要支持。因此，我們與市民建立夥伴關係，對維護公義有莫大好處。

要取信於民，先要令公眾確信檢控人員忠於職守，時刻公平公正、不偏不倚地秉行公義。這方面最為困難是當處理涉及公眾事宜時，該如何界定誰是公眾。我認為“公眾”一詞是指整體市民，但事實上要真實收集公眾的“整體意見”是相當困難的，因為公眾是由多個不同的個人和團體組成，對事情的看法可能各不相同，有時甚至是南轅北轍；而所謂公眾意見，也未必是在完全知情或充分知情的情況下得出的意見，甚至未必一定是理性的。

撇開這個問題不談，我們需要研究檢控人員如何能夠取信於民並加以維繫。我認為這必須取決於公眾對刑事司法制度及檢控機關的工作及職能有什麼認識。

Being a public prosecutor is not an easy job. There is a lot at stake, and there are a lot of stakeholders interested in or affected by what we do and how we do it. What is at stake is our criminal justice system. And of all the stakeholders, the most important is the public. We are after all "public" prosecutors and we serve the public by providing justice to all equally and fairly. It is an onerous and mighty objective and there will be times when the handling of a case by the prosecution will not be understood or appreciated by the public and may even result in public criticism or concern. The sad reality is that it only takes one case to go seriously wrong for the public to lose confidence and trust in the prosecution service. One thing is clear, to have the confidence and trust of the public you have to earn it, and having earned it, you have to maintain it. As public prosecutors, we sometimes underestimate how important public confidence and trust is to our work. We must not fall into the trap of having "a holier than thou" attitude and forget who we are there to serve. Public confidence and trust is both a measure of and a support for the work that we do and there is a lot to be gained by forming a partnership with the public in serving the interests of justice.

Public confidence and trust is where the public feel assured that public prosecutors are doing their job properly by ensuring that justice is dispensed at all times with equal measure and in an even handed manner to all. The obvious difficulty when dealing with issues involving the public is determining exactly who the public is. I will treat the term "the public" as relating to the people as a whole but in reality it is difficult to truly gauge the views of the public as a whole when it is made up of individuals and groups who may hold different and sometimes extreme views and the views being represented as the public's may not be fully or properly informed views or even rational in all the circumstances.

Putting this issue aside, we need to address how a prosecutor earns and maintains public confidence and trust. It would seem that this must depend on what the public know about the criminal justice system and the work and function of the prosecution service.

We need to start therefore by understanding the purpose of the criminal justice system. It has been said it is to preserve public order and decency; protect individuals and their property from harm; provide sufficient safeguards against the exploitation and corruption of others, especially the vulnerable; and punish those who deserve punishment by means of incapacitation, deterrence, reformation or reparation. Public prosecutors play a key role in meeting the objectives of the criminal justice system. We are required to uphold the rule of law and enforce it. This is what society expects of us. It is also important to bear in mind that we act on behalf of the public and not on behalf of the government or law-enforcement.

Public order is secured by the exercise of power and without the confidence and trust of the public, those who exercise that power will fail to establish the legitimacy necessary to fulfil this role. For the public to have confidence and trust in the prosecution service, a number of key goals need to be achieved. We need to be professional at all times and ensure that the law is applied

由此引伸，我們首先要了解刑事司法制度的目的。有人說，刑事司法制度旨在維持公眾治安與風紀；保障個人及其財產免受傷害；充分保障市民，特別是弱勢社羣，不致受人利用及腐化；以及通過隔離、阻嚇、感化或賠償等方法，懲罰罪有應得的人。在確保刑事司法制度能達到既定的目標，檢控人員擔當重要角色。我們必須恪守法治及依法行事，這是社會對我們的期望。我們還應緊記，我們是代表整體市民而非政府或執法機關行事。

要維持公眾治安，得行使權力；行使權力者若不能取信於民，便無法取得履行這項職務所需的認受性。檢控機關要取信於民，必需達致多個主要目標。我們要時刻保持專業水準，確保在法律面前，所有人都受平等對待，並且必須運用得宜；我們要公正而堅定的秉行公義。我們也要透明問責，不可黑箱作業。我們公布相關的指引和政策，目的是令法律同業和市民知道我們是如何處理案件和作出決定。我們要作好準備，就所作的決定進行討論和闡釋，尤其在市民對有關決定表示關注時，更要與市民溝通，釋除他們的疑慮。總括而言，我們要令市民確信，我們行事是以公眾的整體最佳利益為依歸。換言之，我們需要提供專業、公平和獨立的檢控服務。檢控機關必須專業能幹及高效率，這可通過培訓和累積經驗，以及在處理案件時提供適當的支援和資源而達到。檢控機關必須公正誠實，要做到這點，我們必須時刻提醒檢控人員要秉行公義，切勿為求定罪而不擇手段。檢控機關也須保持檢控職能獨立和監控檢控工作。檢控機關必須不受任何干擾，秉持原則處理檢控工作。這是檢控機關的一大特點，要做到這點，全賴檢控機關內的人員正直不阿、誠實可靠。

檢控機關與很多持份者接觸，當中與市民建立的夥伴關係尤其重要。市民在合理情況下有權知道刑事檢控工作是如何進行。今時今日，市民大眾越來越明瞭自己的權利和義務，因而期望及希望檢控人員讓他們知道得更多。因此，檢控機關應該積極增進市民對刑事司法制度、檢控機關的角色和工作的認知，至為重要。透過公眾教育，市民可認識和了解檢控機關的工作，從而給予認同和支持。當然，這要視乎檢控機關有否做好本份。另一好處是，檢控機關可藉此

equally to all and that we get it right. We need to be fair but firm and ensure that we get just results. It is also important that we be transparent and accountable and not operate behind closed doors. Published guidelines and policy are an important means of informing the profession and the public of how we handle and decide on cases. We need to be prepared to discuss and explain decisions and, in particular, engage the public and address public concerns when they arise. Overall we need to make the public confident that we are acting in the best interests of the public as a whole. This means we need to provide a prosecution service that is professional, fair and independent. A prosecution service needs to be competent and efficient. This is achieved through training and experience and by providing appropriate support and resources in the handling of cases. A prosecution service needs to be fair and honest. This is achieved by constantly reminding prosecutors of the role that they perform as a minister of justice and of the importance of not winning convictions at any cost. A prosecution service also needs to maintain independence and control over prosecutions. It must remain free from any interference and take a principled approach to the work that it does. This is a key feature of a prosecution service and relies heavily on the integrity and honesty of the people that make up the service.

Whilst a prosecution service deals with a number of stakeholders, the partnership that it forges with the public is especially important. The public have a right to know within reason how public prosecutions are being conducted. Members of the public are becoming increasingly knowledgeable about their rights and obligations and hence they expect and want to know more from their public prosecutors. It is therefore imperative that a prosecution service actively seeks to increase the public's knowledge and awareness of the criminal justice system and the role and work of the prosecution service. By educating the public, you will have an informed and understanding public that will better appreciate and appropriately support the work of the prosecution service. Of course, this will depend on the prosecution service doing its job properly. There is also the added advantage that it provides the opportunity to explain to the public their civic duties and responsibilities in the pursuit of criminal justice and to encourage them to report crime and assist the authorities. It is vital for members of the public to appreciate the important role they perform, and the responsibility they have, in achieving criminal justice. Taking the mystique out of the law and enabling the public to better understand it will go a long way to help the public feel assured about the criminal justice system and the public prosecutor's role in the criminal process.

How we forge that partnership with the public requires us as prosecutors to reach out and to talk and listen to members of the public. Maintaining a dialogue with the public can be achieved in various ways. One way is through the publication of policy statements, information brochures and a yearly report. Another is through participation in public forums and events. In Hong Kong we held Prosecution Week where we engaged in a week of activities promoting the prosecution service. We produced a brochure on the prosecution service and distributed promotional items such as rulers imprinted with "Rule Out Crime" and "Rule of Law". Prosecutors attended schools and community groups and gave talks about the prosecution service and the criminal justice system. We held mock trials and seminars on criminal justice. It is imperative that the public has online access to the prosecution service. A dedicated website providing information about the service and its work, as well as more general information about the criminal justice system, is essential. An e-mail address is also essential to enable the public to promptly and effectively contact the prosecution service. There should be a dedicated unit within the prosecution service dealing with complaints and feedback from the public. It gives both reassurance to the public and vital feedback to the prosecution service about the quality and standard of work that it is providing. Media relations are also important in this regard. This brings us to the issue of the social media. It is without doubt that social networks are a source of information and a means of communication. The issue is how reliable and useful are they in this context. Official blogs are becoming increasingly

機會向市民解釋，在維護刑事司法公義方面，市民應盡的公民義務和責任，並鼓勵他們舉報罪案和向有關當局提供協助。令市民認同他們也有責任維護刑事司法公義，而且擔當重要角色，是十分重要的。消除法律的神秘感，讓市民多了解法律，都有助於令市民對刑事司法制度，以及檢控人員在刑事司法程序中的角色，感到安心。

檢控人員若要與市民建立夥伴關係，必須與市民接觸、對話及聆聽市民的意見。我們可以透過不同途徑與市民保持溝通。其中一個方法是編製政策說明書、資料小冊子及年報。另一方法是透過參與公眾論壇和活動。我們在香港舉辦了檢控週，為推廣檢控服務而舉辦為期一星期的活動。我們編製介紹檢控服務的小冊子和派發宣傳品，例如印有“Rule Out Crime”(“滅罪”)和“Rule of Law”(“法治”)的間尺。檢控人員也有到學校及社區團體出席講座，講解檢控工作和刑事司法制度。我們還舉行模擬法庭審訊和刑事司法制度研討會。讓市民能夠在網上查閱檢控機關的資料也至為重要，因此，檢控機關建立專題網頁，提供檢控服務和工作的資料，以及刑事司法制度的一般資料，是必不可少的。電郵地址也是讓市民能夠迅速和有效地聯絡檢控機關所不可或缺的。檢控機關應設立專責處理市民投訴及意見的組別，這可以令市民安心外，也可藉此收集市民對其服務質素及水平的寶貴意見。在這方面，傳媒關係也很重要，這又引伸到社交媒體的問題。毫無疑問，社交網絡是一個資料來源及溝通途徑。但問題出於社交網絡在這方面究竟有多可靠和多有用。專業人士及團體建立官方網誌日趨普遍，但我們利用社交網絡收集公眾意見或與公眾雙向溝通時，必須小心謹慎。當中的主要困難是，在大部分情況下，我們都不知道所接觸的是誰，也無法確定對方所提供的資料是否可靠和準確。

當市民的關注或意見關乎或可能影響到檢控工作，我們有必要充分了解和作出回應。這可通過多種方法進行。法院的決定和判決，可作為衡量和評核檢控機關在法庭的工作表現；與私人執業律師和市民溝通，可提供一個進行討論和反映意見的機制；覆檢個別投訴及意見，又是另一個重要的衡量機制。留意傳媒並與之溝通，有助我們了解市民關注或感興趣的事宜，正如立法機關通過辯論以制定法律一樣。

為了貫徹刑事司法制度的目標，檢控機關必須確保每宗刑事案件都經過充分調查後才進行檢控，以及執法人員不但處理簡單的案件，也處理棘手的案件。如法律不張，檢控機關有責任仗義執言，確保秉行法治，公正執法。此外，檢控機關也有責任把違法者繩之於法，並以公平恰當的方式秉行公義。

得到市民的信任及認同，對檢控機關至為重要，否則，檢控機關便無法在社會上確立認受性和地位以履行職務。因此，檢控機關要取信於民，唯有憑着出色的工作表現，以及有效、公平和公正地維護法治，方能達此目的。正因如此，與市民建立夥伴關係、增進市民對刑事司法制度的認識、令市民更深入地了解檢控機關的工作並給予支持，至為重要。

common with professional people and bodies. However, care and caution needs to be taken with social networks as a gauge of public views or as a form of communication to and from members of the public. The major difficulty is that in most cases you do not know who you are dealing with, and you are unable to determine the reliability or accuracy of any information that is provided.

There will be occasions when it is necessary to gauge and address public concern or views that relate to or may impact on a prosecution. This can be done by various means. Court decisions and rulings can provide a measure and assessment of how the prosecution service is performing in its work before the courts. Interacting with the private profession and the public provides a mechanism for discussion and feedback. Reviewing individual complaints and feedback is another important gauge. Monitoring and interacting with the media provides an insight into issues arousing public concern or interest, as does the legislature through debates and enactment of laws.

In meeting the objectives of the criminal justice system, it is incumbent on a prosecution service to make sure that criminal matters are investigated and prosecuted and that law enforcement is tackling the difficult as well as the easy cases. If the laws are not being enforced, it is the responsibility of the prosecution service to speak up to make sure they are. It is also the responsibility of the prosecution service to bring to justice those who offend the law and to get the right results by fair and proper means.

Public confidence and trust is the lifeblood of a prosecution service. Without it, a prosecution service will fail to establish the requisite legitimacy and standing within the community to fulfil its role. A prosecution service needs to earn public confidence and trust and that can only be achieved through good work and by effectively upholding the rule of law fairly and equally. To this end, it is important to form a partnership with the public and increase public awareness about the criminal justice system so that it is able to better understand and support the prosecution service.