

律政司  
刑事檢控科

香港金鐘道 66 號  
金鐘道政府合署高座 5 樓  
圖文傳真：852-2877 0171



DEPARTMENT OF JUSTICE  
Prosecutions Division

5/F., High Block  
Queensway Government Offices  
66 Queensway, Hong Kong  
Fax: 852-2877 0171

本司檔號 Our Ref: DOJ PRO/6031/4/2/1C  
來函檔號 Your Ref:  
電話號碼 Tel. No.: 2867 2266

18 March, 2004

The Secretary-General  
Law Society of Hong Kong  
3/f Wing On House  
71 Des Voeux Road  
Central  
HONG KONG

(Attn : Ms. Christine W. S. Chu  
Assistant Director of Practitioners Affairs)

Dear Ms. Chu

**Supply of Prosecution Papers in the Magistrates Court**

I refer to your letter of the 28 January 2004, subsequent correspondence, our telephone conversations, and to the meeting between members of the Criminal Law sub-committee of the Law Society and members of this division, held on 15 December 2003. I have now had an opportunity to consider the matters raised, and to discuss it with the police, other law enforcement agencies, and the departmental prosecution authorities, and am able to provide a reply to your original letter.

**The current position**

2. As a general proposition, it is, of course, accepted that a defendant in a criminal prosecution, is entitled to know the case that is alleged against him/her. Accordingly, it has been the practice for a long time now, that defendants in the Magistrates Courts are provided with a copy of the

charge sheet<sup>1</sup>, the brief facts [if any]<sup>2</sup>, and any written or transcribed statement made by the defendant, under caution.

3. Where a plea of not guilty has been entered, then a copy of relevant 'used' material i.e. statements of the prosecution witnesses it is intended to call, and any documentary exhibits<sup>3</sup> the prosecution intends to produce, will be provided to the defendant. It has been the practice that some law enforcement agencies and departments charge a fee for this material, whilst others do not – sometimes there is also a variation between branches of the same agency, so that one may charge and another may not.

4. In regard to relevant *unused* material i.e. material that the prosecution does not intend using in the prosecution, but which has some relevance to the case, whilst these will be made available for inspection, if a copy is required the relevant agency will charge a fee.

### **Some observations**

5. It is generally accepted that the present arrangements do not go far enough, in the light of recent court decisions and accordingly, new arrangements are necessary.

6. In this time of fiscal constraint, we are concerned about unnecessary waste of public money, and accordingly, we do not think it appropriate that every defendant in the almost 200,000 cases that come before the Magistrates Courts should receive a full set of used material. Only about 10% of cases go to trial, and this would mean that a considerable amount of resources would be wasted in copying papers for the other 90% or so, of cases.

7. We appreciate, however, that in some cases, perhaps more complicated cases, in order for a solicitor to provide proper legal advice to the client, including advice as to the plea, it would be necessary to see the used material before providing such advice. From our discussions with your committee, it would seem that this is not necessary in the majority of cases.

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<sup>1</sup> or summons, as the case may be.

<sup>2</sup> In some departmental and traffic summons cases, there is no summary of facts, and the contents of the summons are treated as the facts of the case.

<sup>3</sup> Documentary exhibits include maps, photographs, sketch plans, videotapes, audiotapes as the case may be.

### The new arrangements

8. From the 1 April 2004, the following arrangements will become effective :

1. A full set of used material will be provided *upon request in writing*, and *without charge*, to all represented defendants' solicitors, in all cases in which a *plea of not guilty* has been entered<sup>4</sup>.
2. In regard to videotaped records of interview, a copy of the tape will be provided, although if the contents of the taped interview is transcribed, and if that transcript is translated to a language other than the language in which it was recorded, then a hard copy of the transcript and/or translation i.e. whatever document comes into existence, will be provided.
3. Where the solicitor requires access to the used material in order to advise the client as to the plea, then the law enforcement agency or the departmental prosecutions office will co-operate by making the papers available for perusal.
4. If the solicitor finds the arrangement [mentioned in 3] to be impractical in a particular case, then a written application for a copy of the used material, may be made. *The co-operation of your members, in ensuring that applications for a copy of the used material, prior to a plea of not guilty being entered, are only made when it is absolutely necessary, would be greatly appreciated.* If a set of the papers is provided, then the set will be provided *without charge*.
5. In relation to relevant *unused* material, in accordance with the prosecution's duty to disclose, a list of unused material *will* be provided. Except for items over which privilege may be claimed, the law enforcement agency or the departmental prosecutions office will make the material available for inspection upon request. Should a copy of any of the unused material be required, then the law enforcement agency or departmental prosecutions office, as the case may be, *reserves the right to charge a fee* at the current Government approved rate per page, for a copy of that material.

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<sup>4</sup> Note: Only one set of papers will be provided for each defendant but if co-defendants have common representation, only one set of papers will be provided for the jointly represented defendants. If there is a change of solicitor, it is expected that the papers will be passed to the new solicitors, and therefore a further copy will not be provided without charge.

**Unrepresented defendants**

9. It is also the practice to provide a copy of the used material to unrepresented defendants, where a plea of not guilty has been entered.

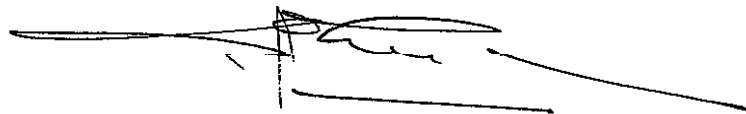
**In conclusion**

10. I hope the foregoing information is of assistance to your members, in explaining the new arrangements, and that your members will find the arrangements more convenient than the current arrangements.

11. If you require clarification of any matter raised herein, please do not hesitate to contact me.

12. In order to avoid any misunderstandings, I am copying this letter to the various law enforcement agencies, departments and statutory authorities which conduct their own prosecutions, and the Senior Court Prosecutors I at each Magistracy [and in the event of any of those agencies or persons requiring clarification of any matter raised, they are also invited to contact me].

Yours sincerely



(John Reading, SC)  
Deputy Director of Public Prosecutions

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(for the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services)

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(Attn. : Mr. Chan Kwok-ki, Assistant Principal Immigration Officer  
Mr. Chui Man-wah, Chief Immigration Officer)