

分科一——法律指引

Sub-division I - Advisory



分科一主要負責就三個級別法院（即裁判法院、區域法院和原訟法庭）審理的刑事案件向執法機關提供法律指引。檢控官根據《檢控守則》訂明的兩階段驗證標準決定就某案件提出檢控與否：首先判斷現有的證據能否支持有合理機會達致定罪，如果有的話，再考慮檢控是否符合公眾利益。檢控官也會就適當的控罪和合適審訊的法院提供法律指引，確保為案件作好審前準備。

分科一設有三組，各組有特定的工作範疇。以下是分科一的工作範疇及 2020 年內經該分科各組處理的一些受注意的案件。

分科一第 1 組 — 原訟法庭法律指引

原訟法庭法律指引組負責就原訟法庭審理的刑事案件（例如殺人、強姦、販毒、綁架、搶劫等），向警方及其他執法機關提供法律指引。

該組檢控官負責就證據是否充分及適當的控罪提供法律指引。檢控官在提供指引後，會處理案件交付原訟法庭審判的程序及相關法律程序事宜，以確保案件適時交付原訟法庭審訊或判刑。

如被告在交付審判時承認控罪，檢控官會擬備標明頁碼的聽取對控罪的回答及判刑文件冊，以及負責原訟法庭的判刑聆訊。

如被告在交付審訊時否認控罪，檢控官會擬備並送交存檔公訴書，以及遞交標明頁碼的交付文件冊。檢控官亦會與出庭提控的檢控人員緊密合作，處理向法庭提交附加證據和向辯方披露案件資料的事宜，以及出席案件管理聆訊，並在有需要時提供意見。

被告在判刑前向當局提供協助屬高度敏感的事宜，是該組的檢控官在處理案件時往往遇上的情況。*R v Sivan and others* [1988] 87 Cr App R 407 一案確立了處理上述情形的相關原則。此外，上訴法庭在 2019 年 6 月 14 日就香港特別行政區訴楊凱婷 [2019] 3 HKLRD 516 一案作出判決，其中薛偉成法官詳列在

Sub-division I is primarily responsible for advising law enforcement agencies with respect to criminal cases to be tried at the 3 levels of Courts, namely, Magistrates' Courts, the District Court and the Court of First Instance. Public Prosecutors decide whether or not to prosecute in accordance with the two-stage test stated in the Prosecution Code: firstly, whether the available evidence supports a reasonable prospect of conviction and if so, secondly, whether it is in the public interest to do so. Public Prosecutors also advise on the appropriate charges to be laid and the proper venue of trial, ensuring that the case is properly prepared for trial.

Sub-division I comprises 3 sections, each handling its specific area. A description of those areas and a highlight of some notable cases handled by each section in 2020 are set out below:

Section I(1) – Court of First Instance Advisory

The Court of First Instance (“CFI”) Advisory Section gave legal advice to the Police and other law enforcement agencies on criminal matters to be dealt with in the CFI, such as homicide, rape, drug trafficking, kidnapping and robbery.

Public Prosecutors in the Section would advise on the sufficiency of evidence and the appropriate charges. After giving advice, Public Prosecutors would see the case through the committal proceedings and attend to procedural matters to ensure that cases are committed to the CFI for trial or sentence in a timely manner.

Where a case has been committed for sentence after a guilty plea at committal, Public Prosecutors would prepare the paginated plea and sentence bundle and attend the sentencing hearing in the CFI.

Where a case has been committed for trial after a not guilty plea at committal, Public Prosecutors would deal with the preparation and filing of the indictment and lodging of the paginated committal bundle. Public Prosecutors would also work closely with the trial prosecutors in handling additional evidence and disclosure matters, as well as attending case management hearings for giving input whenever needed.

Pre-sentence assistance given by a defendant is a highly sensitive issue not uncommon in cases handled by Public Prosecutors in the Section. The well-established principles were set out in *R v Sivan and others* [1988] 87 Cr App R 407. Further, on 14 June 2019, the Court of Appeal handed down the judgement

處理被告以向執法當局提供協助作為求情理由時須遵守的 10 個原則和步驟。該判決提供進一步指引，有助檢控官妥為履行這方面的職責。

在 2020 年年初，司法機構因應 2019 冠狀病毒疫情實施“一般延期安排”，交付審判程序在 2 月及 3 月暫停，至 4 月恢復。儘管程序曾經中斷，2020 年仍有 366 宗案件交付原訟法庭審判，其中 152 宗（數字與 2019 年相同）交付審訊，214 宗交付判刑。此外，依據上訴法院的重審令而提交法庭存檔的公訴書有八份。

該組在 2020 年處理的一些重要案件包括：

- (i) 在香港特別行政區 訴 張祺忠 [2020] HKCFI 3106 一案中，被告為香港大學工程學院副教授，被控謀殺妻子。被告妻子報稱失蹤後，被告購買了一些木板，其後把一個木箱運到其辦公室大樓。後來在該木箱內發現放有一個行李箱，內藏其妻子的屍體。儘管控方和辯方提出的精神科專家證據均支持因神志失常而減責這項局部免責辯護，控方仍然拒絕辯方據此承認誤殺的認罪建議。被告經審訊後被陪審團裁定謀殺罪名成立，判處終身監禁。
- (ii) 香港特別行政區 訴 麥允齡 [2020] HKCFI 3069 一案（即“DR 美容”案）的被告為醫生，由於 2017 年初審未能就其嚴重疏忽導致誤殺的控罪達成裁決，被告遂於 2020 年面對重審。根據控方的案情，DR 集團推銷一項涉及細胞因子誘導殺手細胞 (CIK) 的輸血療程，聲稱能增強免疫系統。被告在不知情的情況下為病人施行受污染的 CIK 療程，導致該名病人死亡。被告被陪審團裁定罪名成立，判處監禁三年零六個月。
- (iii) 在香港特別行政區 訴 曹燕 [2020] HKCFI 1358 一案中，被告被控殺害女兒。警方為處理被告與鄰居的糾紛而進入被告家中，在馬桶內發現被告 12 歲女兒的殘肢。被告被診斷為患有藥物引致的精神病，其基於減責神志失常承認誤殺獲控方接納。被告獲判無限期的入院令。

of *HKSAR v Yeung Hoi-ting* [2019] 3 HKLRD 516, in which Zervos JA set out in detail 10 principles and steps that should be taken when dealing in mitigation with the assistance rendered by a defendant to a law enforcement authority. The judgment is helpful in providing further guidance in properly discharging Public Prosecutors' duties in this area.

In early 2020, due to the COVID-19 outbreak, the Judiciary implemented the “General Adjourned Period”. Committal proceedings were interrupted in February and March, but resumed in April. Despite such interruption, there were 366 cases committed to the CFI in 2020, of which 152 cases (same number in 2019) were committed for trial, and 214 cases were committed for sentence. In addition, 8 indictments were filed pursuant to orders for retrial made by the appellate Courts.

Some significant cases that were dealt with by the Section in 2020 include the following:

- (i) In *HKSAR v Cheung Kie-chung* [2020] HKCFI 3106, the defendant, an associate professor of the Engineering Faculty at the University of Hong Kong, was prosecuted for murdering his wife. After the defendant's wife was reported missing, the defendant bought some wooden boards and subsequently transported a wooden box to his office building. The wooden box was later found to contain a suitcase containing the body of his wife. Despite psychiatric evidence from both Prosecution and Defence supporting the partial defence of diminished responsibility, the Prosecution rejected the defence's plea offer of a guilty plea to manslaughter on that basis. He was convicted of murder after trial by a jury, and was sentenced to life imprisonment.
- (ii) In the “DR Beauty” case *HKSAR v Mak Wan-ling* [2020] HKCFI 3069, the defendant, a doctor, faced a re-trial in 2020 for manslaughter by gross negligence, because no verdict could be reached against her in the first trial in 2017. It was the prosecution's case that the DR group marketed a blood infusion treatment involving cytokine induced killer cells (CIK) which purportedly boosted the immune system. Unbeknown to the defendant, she administered a contaminated CIK treatment into a patient causing the patient's death. The defendant was found guilty by a jury, and was sentenced to an imprisonment term of 3 years and 6 months.
- (iii) In *HKSAR v Cao Yan* [2020] HKCFI 1358, the defendant was prosecuted for murdering her daughter. The Police attended the defendant's home to handle a dispute between the defendant and her neighbour and found the body of the defendant's 12-year-old daughter dissembled in the toilet.



分科一第 2 組 — 區域法院法律指引

在 2020 年，區域法院法律指引組的檢控官向執法機關提供合共 1,071 項法律指引，並透過稱為“FAST”的特快法律指引制度處理另外 259 宗案件。設立該制度旨在以更有效的方式，就簡單直接的案件提供法律指引。

第 2 組的檢控官就多種不同罪行提供法律指引，包括販毒、入屋犯法、搶劫、傷人、導致嚴重後果的交通意外、性罪行，以至洗黑錢和涉及欺詐計劃及不誠實行為的案件等。此外，他們也負責為待審案件作審前準備，並出席就提訊、答辯和判刑、原訟法庭的保釋申請、審訊、上訴和死因研訊的聆訊。該組在 2020 年處理的一些重要案件包括：

- (i) 在香港特別行政區 訴 麥凱晴 [2020] HKDC 1000 一案中，被告因不滿男友與他姐姐的置業財務安排，向他施以殘暴的身體虐待，包括以金屬櫈襲擊其頭部；近距離以風筒熱風烘吹其陰莖；撕去陰莖被風筒烘傷不久後所結的傷疤；把沸水潑向其大腿；用剪刀刺其胸部；以及用辣椒油擦其傷口。被告被控四項意圖傷人罪，經審訊後被裁定罪名成立，判監共三年零五個月。
- (ii) 在香港特別行政區 訴 鄭嘉欣 [2020] HKDC 1251 一案中，被告是一名本地著名音樂人

The defendant was diagnosed to be suffering from drug-induced psychosis. Her plea to manslaughter by diminished responsibility was accepted by the Prosecution. A hospital order of an unspecified period was imposed.

Section I(2) – District Court Advisory

In 2020, Public Prosecutors in the District Court Advisory Section rendered a total of 1,071 advice to law enforcement agencies and handled a further 259 cases via a quick advisory system, known as FAST, which was set up to provide advice on simple and straight forward cases in a more efficient manner.

Apart from giving legal advice on a large variety of offences, ranging from drug trafficking, burglary, robbery, wounding, traffic accidents with grave consequences, sexual offences, to money laundering and cases involving deceptive schemes and dishonesty, Public Prosecutors in Section I(2) were also responsible for preparing cases for trial, attending hearings for plea days, plea and sentence, bail applications in the Court of First Instance, trial, appeals and death inquests. Some significant cases that were dealt with by the Section in 2020 include the following:

- (i) In *HKSAR v Mak Hoi-ching* [2020] HKDC 1000, the defendant was convicted after trial of 4 charges of wounding with intent for having physically abused her boyfriend in a brutal manner, including assaulting his head with a metal stool; blowing hot air close to his penis with a hairdryer; picking scabs off his penis shortly after it was burnt by the hairdryer; pouring boiling water onto his thighs; stabbing his chest with scissors; and rubbing his wounds with chili oil, as she was not



的前助手，負責管理該音樂人及其公司的銀行帳戶。被告在案發兩年間，未經授權，在支票上冒充該音樂人的簽名或使用預先簽署的提款單，從相關銀行帳戶提取約 250 萬港元。證據顯示，挪用的款項部分用以支付被告的旅費及婚宴開支等。被告經審訊後被裁定六項盜竊罪及一項使用虛假文書罪罪名成立，共判監三年。

- (iii) 在 *HKSAR v Lau Ching-ye* [2020] HKDC 449 一案中，被告申請代課教師職位時，向兩間學校偽稱她持有有效的檢定教員證明書，但教育局其實已取消了她的註冊。被告另一次在街上與一婦人交談，提議替其兒子私人補習。儘管建議被拒，被告仍然在未預先通知下來到該婦人的住所，後來更假裝已為其子補習，促使該婦人給她合共 450 港元補習費。孩子的父親不知被告已收取其據稱服務的酬勞，在被告促使下只好給她另一筆補習費 200 港元。被告其後被捕還押，在原訟法庭申請保釋時提交一封偽造信件，聲稱由一名社工撰寫，作為證明文件。被告認罪後被裁定兩項詐騙、兩項盜竊和一項妨礙司法公正罪罪名成立，判監共 39 個月。
- (iv) 在 *HKSAR v Mondesir Johnny* [2020] HKDC 276 一案中，被告經審訊後被裁定兩項洗黑錢

happy with his finance arrangement with his aunt in relation to his purchase of a property. She was sentenced to a total imprisonment term of 3 years and 5 months.

- (ii) In *HKSAR v Cheng Kar-yan, Dominy* [2020] HKDC 1251, the defendant, the former assistant of a well-known local musician, was responsible for managing the musician's bank accounts and those of his companies. For a period of nearly 2 years, the defendant, without authorisation, effected withdrawals of around HK\$2.5 million from those bank accounts by forging the musician's signature on cheques or by using withdrawal forms which had been pre-signed. Evidence revealed that part of the misappropriated funds were used to pay off, *inter alia*, the defendant's own travel expenses and expenses incurred for the defendant's wedding banquet. The defendant was convicted after trial of 6 charges of theft and 1 charge of using a copy of false instrument, for all of which she was sentenced to a total of 3 years' imprisonment.
- (iii) In *HKSAR v Lau Ching-ye* [2020] HKDC 449, the defendant applied for the post of substitute teacher by falsely representing to 2 schools that she held valid certificate of registration as a teacher when in fact her registration had already been cancelled by the Education Bureau. On a separate occasion, the defendant talked to a mother on the street and offered to provide private tuition to her son. Notwithstanding that the offer was refused, the defendant showed up at the mother's residential address unannounced and later pretended to have given tuition to her child which induced the mother to part with a sum of HK\$450 as tuition fee in favour of the defendant. Not knowing that the defendant had already been paid for her purported service, the father of the child was induced by the defendant to part with a further sum of HK\$200 as tuition fee in favour of the defendant. The defendant was later arrested and was remanded. While applying for bail at the Court of First Instance, she submitted a forged letter purportedly written by a social worker as supporting document. Upon conviction on her guilty pleas, she was sentenced to a total term of 39 months' imprisonment for 2 counts of fraud, 2 counts of theft and one count of perverting the course of public justice.
- (iv) In *HKSAR v Mondesir Johnny* [2020] HKDC 276, the defendant was convicted after trial of two charges of money laundering. The Chief Financial Officer of Agriteam Canada was induced to give away the company's bank account credentials in an email fraud. As a result, a total of \$827,000 Canadian currency was transferred from the company's account in Toronto to the defendant's bank account in Hong Kong. Once deposited, the funds were quickly dissipated by the defendant. The

控罪罪名成立。Agriteam Canada 的財務總監在這宗電郵騙案中被誘使洩露該公司銀行帳戶的驗證資料，以致共 827,000 加元從該公司在多倫多的帳戶轉到被告在香港的銀行帳戶。款項存入不久便遭被告提走。基於被告處理有關款項時知悉此乃犯罪收益，法庭裁定被告洗黑錢罪罪名成立。鑑於清洗金額龐大，案件又牽涉國際層面，被告被判監共四年半。在疫情期間，案中主要的加拿大控方證人透過電視直播聯繫作證，無須親自來港出庭。

- (v) *HKSAR v Chen Zhiqiang, Huang Ruixiang and Feng Jiasheng* [2020] HKDC 997 是其中一宗顯示香港走私冷藏食品出境的活動正在上升的案件。兩名內地人企圖以快艇把 4,012 公斤冷藏牛肉運出香港，惟最終事敗。兩名被告在區域法院認罪，當中包括一項共同被控的企圖輸出未列艙單貨物罪。鑑於罪行猖獗，控方根據《有組織及嚴重罪行條例》(第 455 章)第 27 條成功申請加刑。罪行的量刑起點提高 25%，由監禁 12 個月增至監禁 15 個月。

分科一第 3 組 — 裁判法院法律指引

2019 冠狀病毒病在 2020 年對香港各界造成重大衝擊，法庭事務亦不免受影響。司法機構基於公共衛生考慮而制訂的行政措施，令七個裁判法院的開庭安排不時受阻甚至暫停。為使工作保持高水準，不負公眾對檢控官作為秉行公義者的期望，在裁判法院的 74 名法庭檢控主任及於中環律政中心的 20 名檢控官合力確保所有持份者能有效溝通，例如處理改期聆訊及重新調配人手等事宜，以保法院暢順運作。

儘管困難重重，裁判法院在 2020 年仍處理共 110,391 宗刑事案件，當中絕大部分由法庭檢控主任處理；需要提供法律指引的案件則主要由隸屬裁判法院法律指引（一般檢控）組的檢控官處理。本組提供的法律指引由 2018 年 3,880 項及 2019 年 5,709 項持續增加至 2020 年 6,187 項，數目為歷年之冠。

defendant was convicted of money laundering on the basis that he dealt with the funds knowing that they were proceeds of crime. Given the laundered amount and that the case involved an international dimension, the defendant was sentenced to imprisonment for a total term of 4 years and a half. The key Canadian prosecution witnesses in this case gave evidence through live television link without having to personally attend Court in Hong Kong at the time of the pandemic.

- (v) *HKSAR v Chen Zhiqiang, Huang Ruixiang and Feng Jiasheng* [2020] HKDC 997 is one of the cases which demonstrated that smuggling frozen food out of Hong Kong has been on the rise. Two mainlanders attempted to export 4,012 kg of frozen beef from Hong Kong by speedboat. Their attempt was thwarted before it materialised. They pleaded guilty to, *inter alia*, a joint charge of attempting to export unmanifested cargoes in the District Court. In the light of the prevalence of the offence, the Prosecution successfully applied for an enhancement of sentence pursuant to section 27 of the Organized and Serious Crime Ordinance (Cap. 455). The starting point for the offence was enhanced by 25% from 12 months' imprisonment to 15 months' imprisonment.

Section I(3) – Magistrates' Courts Advisory

The COVID-19 pandemic had brought tremendous impact on every sector of Hong Kong in 2020 including court business. Court sittings in the 7 Magistrates' Courts had from time to time been interrupted or even suspended due to the administrative measures put in place by the Judiciary for reasons of public health concerns. With a view to maintaining the high standard of work expected of Public Prosecutors as ministers of justice, 74 Court Prosecutors stationed at the Magistrates' Courts and 20 Public Prosecutors stationed at Justice Place in Central had worked hand in hand to ensure the smooth running of the Courts by ensuring effective communications between all stakeholders about, for example, rescheduling of hearings and redeployment of staff.

Against all odds, in 2020, a total of 110,391 criminal cases had been dealt with in the Magistrates' Courts. Whilst the lion share was handled by the Court Prosecutors, those requiring legal advice were mainly handled by the Public Prosecutors of the Magistrates' Courts Advisory (General Prosecution) Section. In 2020, we saw a record high number of legal advices at 6,187 which continued to increase from 3,880 in 2018 and 5,709 in 2019.

在 2020 年裁判法院處理的案件中，有相當多與 2019 年 6 月至 2020 年 2 月香港爆發 2019 冠狀病毒病期間社會出現的連串動盪有關。當中性質較輕微而裁判法院有量刑司法權限的案件包括“在公眾地方作出擾亂秩序的行為”；“管有攻擊性武器”（例如雷射筆，以其發出的雷射光照射肉眼可嚴重損害眼睛）；“管有物品意圖摧毀或損壞財產”（例如用於噴塗示威口號的噴漆）；以路障及各種障礙物“在公眾地方造成阻礙”；“在公眾用地展示海報”（包括俗稱“連儂牆”的情況）；涉及暴力的案件更是銳增。

上述案件也帶來判例在 2020 年的新發展，尤其在涉及對年輕罪犯的判刑方面，相關者大多在裁判法院少年法庭受審。在律政司司長提出的一連串覆核刑罰申請中，上訴法庭訂立的一般原則是：在可行的範圍內，法庭會盡量給予年輕罪犯更生的機會。這不是說，法庭只會着眼於年輕這因素，而忽略其他判刑因素。基於公眾利益的考慮，若一些案件牽涉嚴重的罪行或情況而須判處罪犯具阻嚇力的判刑，犯案者年輕或個人背景於判刑將佔非常少比重（如有的話），原因是懲罰或阻嚇的須要凌駕罪犯更生的需要。以律政司司長訴 SWS [2020] HKCA 788 一案為例，15 歲的被告向馬路投擲三枚汽油彈，令若干路面被燒至

The series of social unrests from June 2019 to February 2020 when the pandemic COVID-19 broke out in Hong Kong continued to contribute significantly to the case load dealt with in the Magistrates' Courts in 2020. Such cases which are less serious in nature within the sentencing jurisdiction of the Magistrates' Courts included "behaving in a disorderly manner in public place"; "possession of offensive weapons" such as laser pointers whose laser beams if shone at naked eyes could cause serious ophthalmological harms; "possession of articles intended for destroying or damaging property" such as paint sprays for spraying slogans of protests; "obstructing public places" with barricades and sundries of obstacles; "displaying posters on public land" including what was commonly known as "Lennon Walls"; and a dramatic increase in the number of cases involving violence.

The aforesaid cases also resulted in some new developments in the jurisprudence in 2020 especially those involving sentencing young offenders who are mostly dealt with in Juvenile Courts in the Magistrates' Courts. In a series of applications for review of sentence brought by the Secretary for Justice, the Court of Appeal laid down the general principles that whilst the Court would, where possible, try to give young offenders a chance to rehabilitate, this does not mean that the Court would only focus on the youth factor and ignore other sentencing factors. As a matter of public interest, for cases involving serious offences or circumstances, a deterrent sentence has to be imposed and the youth or personal circumstances of the offender would count very little, if at all. The



燻黑。他在少年法庭承認一項縱火罪，原本被判 18 個月感化令（包括在兒童及青少年院舍接受九個月住院訓練）。上訴法庭裁定，判處少年縱火罪犯感化令並不合適，因為感化令主要是以更生為目的，但沒有充分顧及保護公眾、施加懲罰、公開譴責和阻嚇罪行等出自公眾利益的需要，與縱火罪的嚴重性並不相稱。感化令遂改判為於勞教中心羈留。

至於法庭檢控主任，鑑於該職系大量同事達退休年龄以致人手緊絀，我們在 2020 年 10 月進行招聘工作，從數以千計申請人中選聘 20 多名新入職人員。新入職人員預期在 2021 年年初履新，並會在 2021 年年初及第三季接受兩輪培訓。培訓課程包括講座、參觀其他政府部門、模擬法庭實習訓練和派駐法院實習，旨在讓新入職人員掌握在裁判法院檢控各類案件所需的刑法知識和訟辯技巧。

法庭檢控主任在 2020 年繼續提升學歷。在 74 名法庭檢控主任中，六人取得法律專業資格，四人持有法學專業證書，八人完成法學碩士課程，27 人取得法學士學位或同等學歷。另外，六人正就讀兼讀制法學士學位課程或法律專業共同試課程。

reason is that the need for punishment and deterrence overrides the rehabilitative need of the offender. As an example, in *Secretary for Justice v SWS* [2020] HKCA 788, the 15-year-old defendant threw 3 petrol bombs into the carriageway causing certain areas of it burnt to blackened for which he pleaded guilty to a count of arson in the Juvenile Court. He was originally sentenced to a term of 18 months' probation order including 9 months' residential training at a Children and Juvenile Home. The Court of Appeal held that it was inappropriate to sentence young offenders to probation order for arson because the primary purpose of probation order was to rehabilitate and it does not sufficiently cater for the need of public interest such as protection of the public, commensurate punishment, societal disapproval and deterrence and is not commensurable to the seriousness of the offence of arson. The probation order was replaced by a detention centre order.

As to our Court Prosecutors, amidst the straining manpower of the Grade due to a significant number of colleagues reaching the age of retirement, a round of recruitment exercise was conducted in October 2020 with 20-plus new recruits selected from thousands of applicants. The new recruits were expected to report duty in early 2021 and they would undergo two rounds of training in early and the third quarter of 2021 respectively. The training programme would comprise lectures, visits to other government departments, mock court exercises and court attachments which aim at equipping the new recruits with the requisite knowledge on the substantive law and advocacy skills for prosecuting the array of cases in the Magistrates' Courts.

Our Court Prosecutors continued to enhance their academic qualifications in 2020. Of the 74 prosecutors, 6 became legally qualified, 4 obtained their Postgraduate Certificate in Laws, 8 Master of Laws and 27 Bachelor of Laws (LLB) or equivalent qualifications. Furthermore, 6 are pursuing their LLB or Common Professional Examination on a part-time basis.