分科三—訟辯及上訴

Sub-division III - **Advocacy and Appeals**

分科三專責處理刑事審訊的檢控工作，並就刑事上訴提供法律指引和進行上訴。該分科由副刑事檢控專員掌管，並由訟辯小組和上訴小組的檢控官組成。

訟辯

分科三（訟辯）— 訟辯小組第 1、2 及 3 組

訟辯小組的成員主要為高級助理刑事檢控專員或助理刑事檢控專員，他們專責審訊，不論審訊在哪級法院審理，他們通常在複雜和敏感的審訊中擔任主控官和進行相關上訴，並在複雜的死因研訊中擔任死因裁判人員，協助死因裁判官。經驗較豐富的檢控官經常帶領該分科或其他分科年資較淺的檢控官處理敏感和重大案件的檢控工作。

上訴

上訴小組分為裁判法院上訴組、上級法院上訴組及人權組，各由一名高級助理刑事檢控專員領導。該三組合共處理各級上訴法院的大部分上訴事宜及案件，以及由香港刑事事宜所衍生的司法覆核和人權案件。

分科三（上訴）第 1 組 — 裁判法院上訴

在香港刑事司法制度下，刑事案件大多在裁判法院層面審理。因此，裁判法院上訴佔本港刑事上訴案件的絕大部分。該組負責處理由裁判法院案件衍生的覆核和上訴，組內檢控官就是否根據《裁判官條例》（第 227 章）第 104 條尋求覆核裁判官的決定，或根據第 105 條以案件呈述方式上訴，提供法律指引。只有經慎重考慮後，並且在必要和合乎公義的情況下，或涉及重要法律觀點而須由上級法院釐清時，該組才會決定覆核裁判官的決定或向原訟法庭提出上訴。

該組檢控官身為秉行公義者，肩負協助法庭公正處理上訴的職責，只要所涉事宜合乎公義和法律上正確，便會提出上訴而不會理會結果如何。特別在上訴人沒有法律代表的案件中，該組的檢控官會盡力確保案件的全部案情、法律問題、相關法律原則及典據均妥為提交法庭考慮。2020 年，涉及被告就裁判官的決定、裁決、命令或判刑提

Sub-division III specializes in prosecuting criminal trials and advising on and conducting criminal appeals. It is headed by a Deputy Director of Public Prosecutions and comprises prosecutors who are attached to one of either Advocacy or Appeal Sections.

Advocacy

Sub-division III(Advocacy) – Advocacy Sections (1), (2) and (3)

Members of the Advocacy Sections, mainly Senior Assistant or Assistant Director of Public Prosecutions, are trial specialists. Complex and sensitive trials are usually prosecuted by them irrespective of which level of court the trial is heard and the related appeals are usually conducted by them. They also act as Coroner's Officers to assist coroners in complicated death inquests. The more experienced members frequently lead junior members of this and other sub-divisions to prosecute sensitive and major cases.

Appeals

The Appeal Sections are the Magistracy Appeals Section, Higher Court Appeals Section and Human Rights Section, each led by a Senior Assistant Director of Public Prosecutions. Together, these 3 sections handle the majority of matters and cases related to appeals at all levels of appellate court, as well as judicial reviews and human rights cases stemming from criminal matters in Hong Kong.

Section III(Appeals)(1) – Magistracy Appeals

The vast majority of criminal cases within Hong Kong's criminal justice system take place at the magistrates' courts level. Hence, the number of magistracy appeals occupy the bulk of all criminal appeals in our system. This Section is responsible for reviews and appeals arising from cases in the magistrates' courts. Members render advice on whether or not to seek a review of a decision made by a magistrate and whether to appeal by way of case stated under, respectively, section 104 and section 105, Magistrates Ordinance (Cap. 227). The decision to review a magistrate's decision or appeal to the Court of First Instance will only be taken after careful consideration, and only where it is necessary and in the interest of justice, or where an important point of law which demands clarifications by the higher courts is involved.

Our Public Prosecutors, as ministers of justice, assist the Court in the just disposal of appeals regardless of the result, as long as it is just and legally correct. In particular, in cases where an appellant is not legally represented, our Public Prosecutors will strive to ensure that all the facts of the case, legal issues, relevant legal principles and authorities are properly put before the Court for its consideration.

出的裁判法院上訴有 470 宗，當中 278 宗被原訟法庭駁回，71 宗獲判決得直，121 宗由被告撤回。

分科三（上訴）第 2 組 — 上級法院上訴

該組負責在上訴法庭及香港終審法院審理的所有上訴案件。除了在各級上訴法院處理上訴案件外，該組人員也負責就下述情況提供法律指引：是否根據《區域法院條例》（第 336 章）第 84 條，就區域法院審理的個別案件以案件呈述方式提出上訴；或是否根據《刑事訴訟程序條例》（第 221 章）第 81A 條提出覆核刑罰申請。（凡陪審團裁定無罪的原訟法庭案件，控方不能就有關裁決提出上訴。）只有經慎重考慮後，以及裁決涉及法律觀點有錯誤或裁決屬反常（即合理的事實審裁者按照案情不會作出如此裁決）的情況下，才會決定以案件呈述方式提出上訴。同樣，只有在認為刑罰有原則上錯誤及／或明顯不足或過重的情況下，才會決定申請覆核刑罰。作出此等決定前，必先進行大量法律研究，並要仔細考慮每宗案件的案情和相關法律。2020 年，由被告提出的上訴申請約有 319 宗，當中 142 宗被駁回，45 宗獲判得直，132 宗由被告放棄。

該組作出的決定有時還涉及是否就原訟法庭或上訴法庭的裁決上訴至終審法院。該組在處理此等決定時，會緊記我們在協助發展香港刑事法學和妥善執行刑事司法制度兩方面所擔當的重要角色。2020 年，本司提出一宗向終審法院提出上訴的許可申請。至於由被告提出的“證明書”申請和“許可”申請，則分別有 36 宗和 98 宗。

分科三（上訴）第 3 組 — 人權

該組主要負責處理涉及《基本法》及人權問題的刑事審訊和上訴，也處理由刑事事宜衍生在本質上屬非刑事事宜的司法覆核。該組的職責範圍還包括在刑事案件或上訴中就《基本法》及憲法問題提供法律指引。

對該分科而言，2020 年確實充滿挑戰。年內，因應 2019 冠狀病毒病疫情，司法機構就法庭事務實施一般延期安排，政府亦安排公務員在家工作，情況前所未見。該分科持續為法院提供即時及全面的協助，讓緊急和必要的案件得以在一般延期期間進行聆訊。隨着法庭事務恢復正常，部分案件須緊急排期處理，但有時不可由原先安排

In 2020, there were 470 magistracy appeals brought by defendants against a magistrate's decision, verdict, order or sentence, of which the Court of First Instance dismissed 278 and allowed 71, and 121 appeals were withdrawn by the defendants.

Section III(Appeals)(2) – Higher Court Appeals

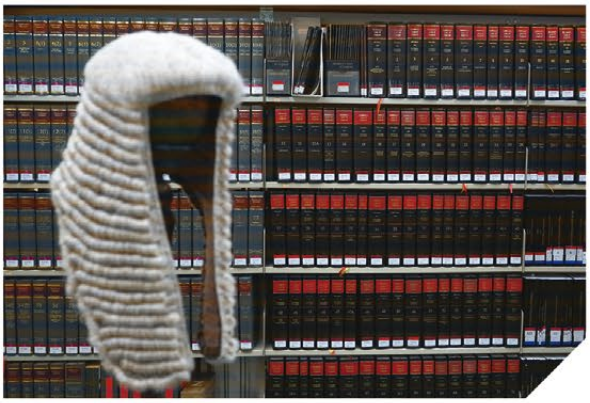
This Section is responsible for all appeal cases heard in the Court of Appeal and the Hong Kong Court of Final Appeal. In addition to conducting appeals in the appellate courts, members of this Section will advise on whether to appeal in a particular District Court case by way of case stated under section 84, District Court Ordinance (Cap. 336), or whether to make an application for a review of sentence under section 81A, Criminal Procedure Ordinance (Cap. 221). (An acquittal by a jury in the Court of First Instance cannot be appealed against by the Prosecution.) Decisions to appeal by way of case stated are taken only after careful consideration, and only where the verdict involves an erroneous point of law or is one that is perverse in the sense that no reasonable tribunal of fact would have reached the same. Likewise, decisions to lodge reviews of sentence are only taken if it is considered that a sentence is wrong in principle and/or manifestly inadequate or excessive. These are made only after substantial legal research and meticulous consideration of the factual and legal matrix in each case. In 2020, some 319 appeal applications were brought by defendants of which 142 were dismissed, 45 were allowed and 132 were abandoned.

At times, decisions will also involve whether to appeal from the Court of First Instance or Court of Appeal to the Court of Final Appeal. The Section approaches such decisions bearing in mind the important role we play in the development of the criminal jurisprudence and the proper administration of criminal justice in Hong Kong. In 2020, this Department made 1 application for Leave to Appeal to the Court of Final Appeal. Applications for "certificate" and "leave" brought by defendants were 36 and 98 respectively.

Section III(Appeals)(3) – Human Rights

This Section is largely responsible for handling criminal trials and appeals involving Basic Law and human rights issues. It is also tasked to handle judicial reviews, which by nature are non-criminal cases, arising out of criminal matters. Its portfolio also includes rendering advice on Basic Law and constitutionality issues in criminal cases or appeals.

2020 was full of challenges for the Sub-division. 2020 saw the unprecedented General Adjourned Period of court business (GAP) enforced by the Judiciary and the Work From Home arrangement of the civil service as a result of the Covid-19 pandemic. The Sub-division managed to maintain prompt and full assistance to the Court in cases that were considered urgent and essential and were



的律師處理，因此迅速有效地調配檢控官，是令法庭事務回復正常的關鍵。

該分科面對的另一挑戰，是裁判法院上訴組和上級法院上訴組得在人手不變（九名檢控官）的情況下，處理急劇增加的工作，嚴峻程度前所未見。這主要是因為對於應否就公眾秩序案件提出上訴（泛指以案件呈述方式對裁判官或區域法院法官的決定提出上訴；對裁判官、區域法院法官或高等法院法官的判刑申請覆核；以及對裁判官的決定申請覆核）尋求法律意見的需求增加，令本已忙於應付日常事務的兩組百上加斤。

與時間競賽是另一項挑戰。如決定有需要就某特定案件提出上訴，則必須在法律規定的限期（由作出有關受質疑決定當日起計 7 至 21 日不等，視乎上訴類別而定）前向法庭提交所需申請。然而，就當中部分申請而言，法律規定必須首先從上訴法院取得上訴許可，而有關申請必須附有由主審法院擬備和提供的文件，這自然需時辦理。

這一切意味着必須緊急提供大量法律意見，而所有被認為有需要上訴的案件須由兩個組別從速處理。以上訴法庭審理的覆核刑罰申請為例，2020 年提交的申請有 17 宗（截至 2021 年 10 月 22 日，當中 16 宗獲法庭判決得直），與過往每一年相比，數量激增。

為應對此一挑戰，內部程序已予簡化，有時更會調派該分科其他組別的人員加以協助，但總的來說，儘管這兩個組別顧名思義獲正式指派處理不同級別法院的上訴案件，但彼此合作無間，攜手完成幾乎所有案件。當有關上訴其後在法庭審理時，除少數上訴外，其餘均由兩個組別的人員及監督該分科的副刑事檢控專員出庭進行爭辯。同

therefore heard during the GAP. Following the resumption of court business, some cases had been listed on an urgent basis and sometimes not handled by the original counsel; a swift and efficient deployment of prosecutors was key to the normalization of court business.

Another challenge was the upsurge in workload to an unprecedented level in the Magistracy Appeals Section and the Higher Court Appeals Section while their manpower of 9 prosecutors remained unchanged. This was mainly due to an increased demand for legal advice as to whether appeals (collectively referring to appeals by way of case stated against the decision of a magistrate or district judge, application for review of sentence imposed by a magistrate, district judge or high court judge, and application for review of decision made by a magistrate) should be initiated in relation to public order cases, and these were on top of the normal diet of the 2 Sections which had already been keeping their members busy.

Time constraint was also a challenge. Should it be the decision that a particular case warrants an appeal, the requisite application must be filed with the Court by the deadline prescribed by law (ranging from 7 to 21 days from the date of the impugned decision depending on the type of appeal). However, in some of these applications, the law requires that leave to appeal has to be obtained from the appellate court first and that the application must be accompanied by papers to be prepared by and obtained from the trial court which naturally takes time.

All these meant that a huge number of legal advice had to be rendered urgently and all those cases where appeals were considered warranted must be processed by the 2 Sections expeditiously. Take applications for review of sentence before the Court of Appeal as an example, 17 applications were filed in 2020 (of which 16 were allowed by the Court as at 22 October 2021), representing a multiple-fold increase compared with each of the previous years.

In order to tackle the challenge, internal procedures were streamlined and at times, members of other sections of the Sub-division were deployed to assist but by and large, although the 2 Sections were officially designated to handle appeals of different court levels as their names connote, they collaborated with each other and consumed almost all of the cases amongst themselves. When subsequently the appeals were heard in court, all except a few of them were argued by members of the 2 Sections and the Deputy Director who oversaw the Sub-division. Again, take applications for review of sentence before the Court of Appeal as an example, 12 applications for review of sentence were heard by the Court of Appeal in 2020 (11 of them were allowed).

樣，以上訴法庭審理的覆核刑罰申請為例，上訴法庭在 2020 年審理的覆核刑罰申請有 12 宗（當中 11 宗獲判得直）。

多宗重要的上訴案件的摘要已載於律政司網頁（https://www.doj.gov.hk/tc/archive/notable_criminal_2020.html 為 2020 年審理的案件，而 https://www.doj.gov.hk/tc/notable_judgments/summary_criminal_cases.html 則為 2020 年提出並在 2021 年審理的案件）。以下為該分科在 2020 年處理的一些其他上訴、審訊、司法覆核及死因研訊案件：

在*香港特別行政區 訴 Gutierrez Alvarez, Keishu Mercedes* [2020] 2 HKLRD 720 的上訴案中，申請人是一名操西班牙語的委內瑞拉女子，被控一項販運危險藥物罪，經審訊後被裁定罪名成立，判處監禁 25 年。申請人就定罪及刑罰提出上訴。就定罪提出上訴的理由之一關乎是否合憲的問題，質疑法庭傳譯主任在犯人欄旁為申請人翻譯審訊程序的過程不設錄音，是否構成違反申請人接受公平審訊的權利（《香港人權法案條例》（第 383 章）（《人權法案條例》）第 8 條下第 10 條及第 11 條第 (2) 款（甲）及（己）項）。申請人又指稱，法庭傳譯主任的傳譯確有不足：在整個審訊過程中，傳譯主任被指稱多次難以理解和傳譯律師的陳詞及法官與律師之間的對話，而申請人則尤其難以理解法官給予陪審團的指示。然而，申請人在審訊時並無投訴。在本上訴案中，申請人並非投訴傳譯主任的西班牙語溝通能力。上訴法庭裁定，不論是普通法下獲取傳譯服務的權利還是《人權法案條例》，均不涵蓋被告索取審訊程序錄音記錄的權利，遑論傳譯主任與被告在犯人欄旁對話的翻譯錄音記錄，亦不保證設有核實翻譯內容的制度。法庭又作出多項裁定，包括就香港刑事司法制度而言，傳譯服務是否符合憲法的驗證準則，是該服務是否足以讓被告充分理解控方案情，使其能有效地提出抗辯，而被告須負起舉證責任，證明傳譯質素欠佳導致有損其抗辯的真實風險。

在*香港特別行政區 訴 陳漢榮* [2020] HKCA 938 的上訴案中，上訴人經審訊後被裁定兩項販運危險藥物罪及一項製造危險藥物罪罪成，判監 26 年。他不服定罪，提出上訴。有關審訊以英語進行，並由傳譯主任在犯人欄旁為上訴人提供中文傳譯

Many of the significant appeal cases are summarized on the Department of Justice's website (https://www.doj.gov.hk/en/archive/notable_criminal_2020.html for cases heard in 2020 and https://www.doj.gov.hk/en/notable_judgments/summary_criminal_cases.html for cases initiated in 2020 and heard in 2021), some other examples of appeal, trial, judicial review and death inquest handled by the Sub-division in 2020 are as follows:

HKSAR v Gutierrez Alvarez, Keishu Mercedes [2020] 2 HKLRD 720, was an appeal against both conviction and sentence by the applicant, a Spanish-speaking Venezuelan female, who was convicted after trial of a single count of trafficking in a dangerous drug and sentenced to 25 years' imprisonment. One of the grounds of appeal against conviction concerned a constitutional challenge against the lack of a dockside recording of the court interpreter's translation of the proceedings to the applicant allegedly amounting to a breach of the fair trial right (Articles 10 and 11(2)(a) and (f) of section 8, Hong Kong Bill of Rights Ordinance (Cap. 383) ("BORO")). It was also alleged that the court interpreter's interpretation was in fact deficient in that on many occasions throughout the trial the interpreter allegedly had difficulty following and interpreting the submissions of counsel and the exchanges between judge and counsel and the applicant had particular difficulty in following the judge's directions to the jury. However, the applicant had not made any complaint at the trial. In the appeal, she was not complaining about the interpreter's ability to communicate in Spanish. The Court of Appeal held that neither the common law right to interpretation nor BORO encompassed the right of a defendant to demand a recording of the trial proceedings, let alone a dockside translation of exchanges between an interpreter and the defendant. Nor was a system of translation verification guaranteed. The Court held, inter alia, that in the Hong Kong criminal justice context the test for determining whether interpretation was constitutionally compliant was whether or not it was sufficient to give the defendant an adequate understanding of the Prosecution case so as to enable effectively putting forward a defence, and the onus was on the defendant to show there was a real risk of prejudice to his defence as a result of the poor quality of the interpretation.

HKSAR v Chan Hon-wing [2020] HKCA 938 concerned an appeal against conviction by the appellant who was convicted after trial of 2 counts of trafficking in a dangerous drug and 1 count of manufacturing in a dangerous drug and sentenced to 26 years' imprisonment. The trial was conducted in English with dockside interpretation in Chinese being provided to the appellant. During the defence case, the jury submitted a note indicating the jury's concern about the case being "a very serious decision on the case concerning the freedom of the defendant, we hereby request to have a Cantonese translator for the closing statements of the Prosecutor, the defendant's lawyer and the Judge to ensure there is

服務。陪審團在辯方提證時呈交短箋，表示關注到“就案件作出的決定十分重要，關乎被告的自由，故請法庭安排廣東話翻譯員就檢控人員、被告代表律師和法官的總結陳述提供翻譯服務，以確保沒有任何誤解。”法官與代表律師商討並徵得上訴人同意後，決定准許陪審員以耳機聽取法庭傳譯主任的傳譯內容。當原審法官把決定告知陪審團時，陪審團確認“至今對全部發言”沒有“任何問題”，但法官仍下令為陪審員提供耳機，以供他們在聽取結案陳詞和總結發言時按需要使用。數名陪審員似乎曾使用耳機。上訴人辯稱，在代表律師以英語（審訊的正式語言）作結案陳詞和總結發言時讓陪審員聽取即時中文傳譯內容的安排構成具關鍵性的欠妥之處，使他得不到公平審訊。上訴人也辯稱，在沒有任何記錄可核實翻譯內容的情況下，傳譯主任確有誤譯之虞。上訴法庭援引*香港特別行政區 訴 江麗華* [2009] 1 HKLRD 284 案，裁定法律並無阻礙法官准許官方法庭傳譯主任就其以英語向陪審員所作的總結發言提供中文翻譯服務，特別是有關要求由陪審團提出，藉以認真履行職責，“確保沒有任何誤解”，且法官和代表律師均認為在有關情況下屬恰當安排。關於傳譯主任或有誤譯總結發言內容之虞以致損害上訴人獲得公平審訊的機會，法庭指出案中傳譯主任是相當優秀、資深和勤勉盡責的法庭傳譯主任，而最重要的是，她曾與該名法官進行約 16 次陪審團審訊，且該名法官也特別留意到除了上訴人外，法庭傳譯主任當時正為七名可能是說華語的陪審員提供翻譯服務。至於上訴人辯稱，由於沒有傳譯主任就總結發言的傳譯記錄，根本無法從中文傳譯記錄得知她實際上有否犯錯，法庭指出最近已在 Gutierrez Alvarez 案中全面審視此論點，並裁定辯方有責任在原審時提出有關傳譯的問題，以便當場採取補救措施，而不是在上訴時才首次提出，因為上訴案有時會在定罪多年後才審理，屆時有關原審審訊過程和發言內容的記憶已變得模糊，甚或消失殆盡。

Balaoro Marietta S. 訴 律政司司長 [2020] 1 HKLRD 1138 案關乎一宗司法覆核申請，申請人為 LGBTS Christian Church HK 的牧師，他要求刑事檢控專員確認進行或參與同性宗教結婚儀式並不構成《婚姻條例》（第 181 章）第 30 條所指的刑事罪行，但遭刑事檢控專員拒絕，遂提出司法覆核申請質疑其決定。申請人由於曾為其教區一名信徒舉行同性宗教結婚儀式而遭拘捕，但最終沒有被

no misunderstanding." Having discussed with counsel, and with the appellant's agreement, the Judge decided to allow jurors to listen to the court interpreter's interpretation through headphones. When the trial Judge informed the jury of her decision, the jury confirmed that there was no "problem with anything that's been spoken about so far". Nevertheless, the Judge ordered that headphone sets would be made available so that the jurors could make use of them if necessary during the closing speeches and summing-up. A few of the jurors appeared to have used the headphones. The appellant contended that these arrangements for jurors to listen to a simultaneous Chinese interpretation of counsel's closing submissions and the summing-up in English, the official language of the trial, amounted to a material irregularity depriving him of a fair trial. It was also argued that there was a real risk of mistranslation by the interpreter, which could not be verified by any record of the translation. The Court of Appeal, applying *HKSAR v Kong Lai-wah* [2009] 1 HKLRD 284, held that there was no impediment in law for the judge to have permitted the official court interpreter to provide a Chinese translation of her English summing-up to jurors, particularly when the jury had requested it in the conscientious performance of their function so as "to ensure there is no misunderstanding", and when both judge and counsel considered it to be proper in the circumstances. On the contention that there was a risk that the interpreter may have misinterpreted something in the summing-up, which thereby undermined a fair trial of the appellant, the Court observed that the interpreter in question was a highly competent, experienced and conscientious court interpreter and, most significantly, undertaken some 16 jury trials with this particular judge, who was also particularly conscious of the fact that she was translating for potentially 7 Chinese-speaking jurors, in addition to the appellant. On the contention that since there was no record of what the interpreter said during the summing-up, there was no way of knowing whether or not she did in fact make a mistake by recourse to a record of her Chinese interpretation, the Court stated that that this argument was recently dealt with comprehensively by the Court in Gutierrez Alvarez holding that it was incumbent on the defence to raise matter concerning problems about interpretation at trial, so that steps could be taken to remedy them there and then, but not to raise the matter for the first time at an appeal, sometimes years after conviction, when memories of what happened and what was said at trial would have faded or disappeared.

Balaoro Marietta S. v Secretary for Justice [2020] 1 HKLRD 1138, concerned an application for judicial review to challenge the decision of the Director of Public Prosecutions ("DPP") in refusing the request of the applicant, a pastor of the LGBTS Christian Church HK, asking for confirmation that the conducting of or participating in religious same-sex marriage ceremonies did not constitute a criminal offence under section 30, Marriage Ordinance (Cap. 181). The applicant had previously been arrested in connection with an

檢控。其法律代表事後去信刑事檢控專員，要求確認進行或參與同性宗教結婚儀式並不構成刑事罪行。刑事檢控專員拒絕確認，理由是他沒有相關能力。法庭同意刑事檢控專員的觀點，並信納刑事檢控專員在法律上無權確認申請人尋求確認的事項，即“不構成刑責”和沒有“被檢控風險”兩點。法庭駁回申請人的司法覆核許可申請，並判律政司司長可得訟費。

在*香港特別行政區 訴 吳欣鍵*（高院刑事案件 2018 年第 329 號）一案中，被告在巴士上刺殺其女友，然後刺傷和斬傷自己並跳下巴士企圖自殺。被告事後生還，被控謀殺其女友。審訊歷時 37 天，主要爭議點為被告可否因神志失常而減責。被告的抗辯理由是在案發時其精神十分紊亂，以致對意識責任的判斷能力嚴重受損。控方及辯方共傳召五名精神科醫生及兩名心理學家。經過七小時商議，陪審團一致裁定被告謀殺罪名成立。被告被判終身監禁。

在*香港特別行政區 訴 李林昌（第一被告）、陳俊成（第二被告）及陳曉彤（第三被告）*（東區裁判法院刑事案件 2019 年第 2067 號）一案中，一眾被告被控一項串謀在選舉中作出提供利益予他人的舞弊行為罪，而第二及第三被告也各被控一項在選舉中作出接受利益的舞弊行為罪。第一及第二被告為的士司機從業員總會會員，而第三被告為第二被告長女。在第二及第三被告的協助下，第一被告收集了第二被告、第三被告、第二被告的妻子及幼女、第三被告時任男友的個人資料，幫助他們註冊成為電機暨電子工程師學會正式會員，以便他們合資格登記並順利登記成為 2016 年立法會換屆選舉（該選舉）資訊科技界功能界別的選民，即使他們並無任何與資訊科技相關的資格或工作經驗。就此，他們各獲第一被告給予港幣 1,000 元的報酬。約在選舉前一周，第一被告以 WhatsApp 向第二被告發送在該選舉中資訊科技界功能界別一名候選人的競選廣告。第二被告也通過其 WhatsApp 家庭羣組向第三被告、妻子及幼女發送包括該候選人競選廣告在內的訊息，要求他們投票給該候選人。投票當日，該三名被告及第二被告的妻子在所屬的指定投票站領取選票，並在該選舉中投票給該候選人。經審訊後，三名被告均被裁定控罪成立。第一被告被判處監禁九個月，而第二及第三被告各被判處監禁 11 個月。

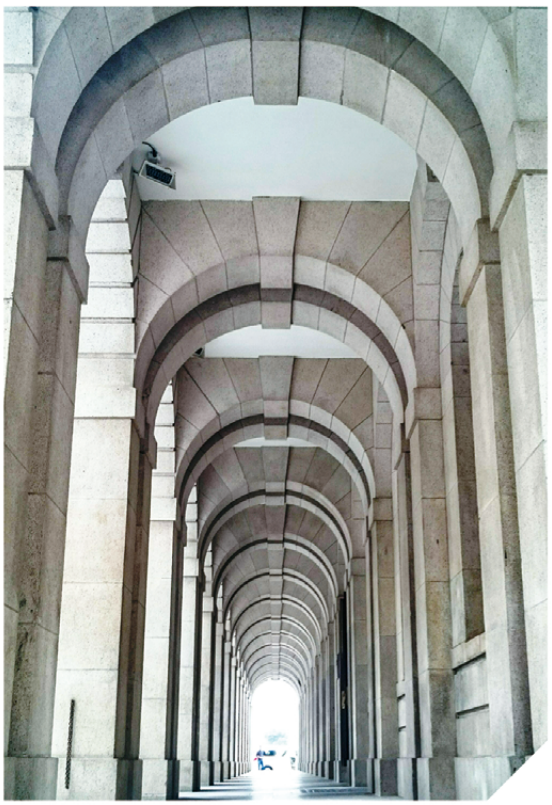
incident of performing a same-sex religious marriage ceremony for one of his parishioners which did not lead to an eventual prosecution. His legal representative then wrote to the DPP asking for confirmation that the conducting of or participating in religious same-sex marriage ceremonies did not constitute a criminal offence. The DPP declined to provide such confirmation because he was not in a position to do so. The Court agreed with the DPP's view and satisfied that the DPP is legally entitled not to provide the confirmation of "non-criminality" and no "risk of prosecution" sought by the applicant. The applicant's application for leave to apply for judicial review was dismissed with costs be to the Secretary for Justice.

In *HKSAR v Ng Yan-kin* HCCC 329/2018, the defendant stabbed his girlfriend to death on board a bus, he then attempted to commit suicide by stabbing and cutting himself before he jumped off the bus. He survived and was prosecuted for murdering his girlfriend. The trial, lasting for 37 days, centred upon the issue of diminished responsibility. The defence was that the defendant was suffering from a severe mental disorder at all material times thereby substantially impaired his mental responsibility. The Prosecution and the defence called a total of 5 psychiatrists and 2 psychologists. After a 7-hour deliberation, the jury returned a unanimous guilty verdict of murder. The defendant was sentenced to life imprisonment.

In *HKSAR v Li Lam-cheong (D1), Chan Chun-shing (D2) and Chan Hiu-tung (D3)* ESCC 2067/2019, the defendants were charged with 1 count of conspiracy to engage in corrupt conduct at an election by offering advantage to others, and D2 and D3 were each also charged with 1 count of engaging in corrupt conduct at an election by an accepting an advantage. D1 and D2 were members of Taxi Drivers & Operators Association whilst D3 is the elder daughter of D2. D1, with the assistance of D2 and D3, collected the personal information of D2, D3, D2's wife, D2's younger daughter and D3's then boyfriend to help them register as full members of the Institute of Electrical and Electronics Engineers, Inc. (IEEE) so that they

在*香港特別行政區 訴 杜啟華*（區院刑事案件 2019 年第 778 號）一案［咬斷手指案］中， 案發時為大學生的被告與數百人在 2019 年 7 月 14 日沙田一場大型反修例示威後，於傍晚在沙田新城市廣場聚集，多人襲擊警務人員。當廣場三樓有多名示威者與警務人員發生混亂情況時，被告將一把雨傘由廣場四樓投擲至三樓，因此被控在公眾地方作出擾亂秩序行為（《公安條例》(245 章）第 17B 條）。被告之後衝到三樓，用雨傘打了一名警務人員背部三下，因此被控襲擊執行職責的警務人員（《警隊條例》（第 232 章）第 63 條）。被告其後用雨傘襲擊一名高級警司，後者試圖擋開襲擊時右手無名指骨折，被告因此被控對他人身體加以嚴重傷害（《侵害人身罪條例》（第 212 章）第 19 條）。該名高級警司曾嘗試與其他警務人員合力制服被告，其中一名警長試圖用右手在被告臉部施以“壓點控制法”。被告奮力反抗，並咬斷該名警長的右手無名指指尖，因此被控意圖傷人（《侵害人身罪條例》（第 212 章）第 17 條）。被告經審訊後被裁定全部四項罪名成立，被判處監禁五年六個月。

在*香港特別行政區 訴 何力桓（第一被告）及羅建華（第二被告）*（區院刑事案件 2019 年第 880 號）一案中，兩名被告於 2019 年 8 月 29 日大約



became eligible to and did register as electors in the Information Technology Functional Constituency (ITFC) at the 2016 Legislative Council General Election (the "Election"), even though none of them had any IT-related qualification or work experience. In return, they each received a reward of HK$1,000 from D1. About a week before the Election, D1 sent D2, via WhatsApp, the election advertisement of one of the candidates in the ITFC at the Election. D2 also sent messages including the candidate's election advertisement to D3, his wife and younger daughter through his family WhatsApp group, asking them to vote for the candidate. On the Polling Day, the 3 defendants and D2's wife obtained ballot papers at their designated polling station and they voted for the candidate at the Election. All 3 defendants were convicted as charged after trial. D1 was sentenced to 9 months' imprisonment whilst D2 and D3 were each sentenced to 11 months' imprisonment.

In *HKSAR v TO Kai-wa* DCCC 778/2019 [The finger-biting case], following a massive anti-extradition-bill protest in Shatin on 14 July 2019, several hundred people including the defendant, who was a university student at the time, gathered at the Shatin New Town Plaza in the evening where many of them were attacking police officers. The defendant threw an umbrella from Level 4 to Level 3 of the Plaza where there was a chaotic situation involving protesters and police officers, and hence was charged with disorderly conduct in a public place under section 17B, Public Order Ordinance (Cap. 245). The defendant then rushed down to Level 3 and used an umbrella to hit the back of a police officer thrice, and hence was charged with assaulting a police officer in the execution of his duty under section 63, Police Force Ordinance (Cap. 232). The defendant subsequently used an umbrella to assault a senior superintendent who suffered a fracture to his right ring finger while trying to ward off the assault, and hence was charged with inflicting grievous bodily harm under section 19, Offences against the Person Ordinance (Cap. 212). The said senior superintendent tried to subdue the defendant with other police officers, including a sergeant who tried to apply "Pressure Points Control" with his right hand on the defendant's face. The defendant put up a vigorous struggle and bit off the tip of the said sergeant's right ring finger, and hence was charged with wounding with intent under section 17, Offences against the Person Ordinance (Cap. 212). The defendant was convicted of all 4 charges after trial and was sentenced to imprisonment for 5 years and 6 months.

HKSAR v Ho Lik-wun (D1) and Lo Kin-wa (D2) DCCC 880/2019 concerned a failed attempt to attack political activist at a restaurant in Jordan on 29 August 2019 at around noon. About an hour before the attempted attack, D1, who was aged 15 years old at the time, followed the activist in Jordan until the latter entered a restaurant with his friends. In the course of following him, D1 reported the activist's whereabouts to D2 who was driving a stolen vehicle in Jordan. A few minutes before the attempted attack, D1 took over

中午時分企圖在佐敦一間餐廳襲擊一名政治活躍分子不果。案發時第一被告 15 歲。在企圖襲擊前約一小時，他開始在佐敦跟蹤該名活躍分子，直至後者和朋友進入一間餐廳為止。跟蹤期間，第一被告向第二被告報告該名活躍分子的行蹤，當時第二被告正在佐敦駕駛一輛失車。在企圖襲擊前數分鐘，第一被告接替第二被告駕駛車輛，而第二被告則在餐廳附近徘徊。第一被告駛至餐廳後，兩名蒙面非華裔男子下車，他們一人手持棒球棍，一人手持牛肉刀，一同衝進餐廳企圖襲擊該名活躍分子，該名活躍分子的友人嘗試抵擋襲擊，左前臂被手持棒球棍的男子打了三下，而另一名男子則揮舞牛肉刀並把刀砍在餐桌上。他們其後逃離餐廳，登上第一被告駕駛的車輛離開佐敦。該名活躍分子並無受傷。第一和第二被告共同被控串謀意圖對該名活躍分子身體造成嚴重傷害罪，並各自被控交通罪行，包括未獲授權而駕駛運輸工具。經審訊後，第一被告被裁定串謀及未獲授權而駕駛運輸工具罪成，並承認其他控罪，被判教導所令及被命令取消駕駛資格。第二被告承認所有控罪，被判處監禁 46 個月及被命令取消駕駛資格。

在死因裁判法庭死因研訊 2016 年第 43 號死因研訊 (死者：王志成先生) 中，死者是一名近乎全身癱瘓的 60 歲男子，居於牛頭角定業街劍橋護老院 (護老院)。2016 年 2 月 2 日，死者在基督教聯合醫院 (聯合醫院) 去世。死因裁判官裁定死者死於自然，即支氣管肺炎。然而，在死者於聯合醫院住院和屍體剖驗時，均發現其肛門裏有一些布條、紗布和膠片。法醫檢驗顯示，某些在死者肛門發現的物料可能來自從護老院檢取的尿片和布條。死者去世五個月後，社會福利署發信警告護老院其員工人數未符法定要求。儘管社會福利署注意到護老院的值勤表上有假冒簽名，但在沒有取得任何法律意見的情況下，決定不予檢控跟進，以致錯過六個月的檢控時效。死因裁判官裁定死者肛門裏的物料是在護老院經理知情和同意下由護老院員工塞入，因為他們相信這些物料可制止死者的失禁問題。死因裁判官亦裁定社會福利署對護老院執法鬆懈，毫無阻嚇作用，因此向社會福利署署長提出 1 0 項有關規管安老院的建議， 包括在安老院提供的文件中發現虛假申述時提出檢控而不是發出警告信、在事件發生後兩個月內發出警告信，以及修訂《安老院實務守則》。

driving the vehicle while D2 lingered around the restaurant. D1 drove the restaurant and dropped off 2 masked non-ethnic-Chinese men. One of them was holding a baseball bat whilst the other was holding a beef knife. The 2 men rushed into the restaurant towards the activist. A friend of the activist's tried to ward off the attack, and his left forearm was struck 3 times by the man holding the baseball bat. The other man brandished the knife and struck a dining table. The 2 men then fled the restaurant and left Jordan in the vehicle driven by D1. The activist was unharmed. D1 and D2 were jointly charged with conspiracy to cause grievous bodily harm with intent to the activist, and each of them was also charged with traffic offences including driving a conveyance taken without authority. D1 was convicted of the conspiracy charge and driving a conveyance taken without authority after trial, and pleaded guilty to the other charges. D2 pleaded guilty to all charges. D1 was sentenced to a training centre order and a driving disqualification order while D2 was sentenced to 46 months' imprisonment and a driving disqualification order.

In death inquest (Deceased: Mr Wong Chi Shing) CCDI 43/2016, the Deceased was a 60-year-old almost fully paralyzed man living in Cambridge Nursing Home at Ting Yip Street, Ngau Tau Kok ("the Care Home"). The Deceased passed away on 2 February 2016 at the United Christian Hospital. The coroner found that the Deceased died from natural causes, i.e. bronchopneumonia. However, some pieces of fabric, plastic and tapes were found in the Deceased's anus during hospitalization at the United Christian Hospital and autopsy. Forensic examination showed that some material found in the Deceased's anus could have originated from the same source as the diaper and fabric seized from the Care Home. 5 months after the death of the Deceased, the Social Welfare Department issued a warning letter to the Care Home regarding failure to meet the statutory requirement of staff number. Despite noticing forged signatures on the work attendance sheets of the Care Home, the Social Welfare Department, without obtaining any legal advice, decided not to follow up with a prosecution which had become time-barred after the lapse of 6 months. The coroner found that the material in the Deceased's anus was inserted by staff of the Care Home, with the knowledge and consent of the Care Home manager, in the belief that the material could stop the Deceased's incontinent problem. The coroner also found the Social Welfare Department's enforcement against the Care Home to be lax without deterrent effect, and therefore made 10 recommendations to the Director of Social Welfare regarding regulation of elderly care homes, including instituting prosecution instead of issuing warning letters upon discovery of false representations in documents supplied by care homes, issuing warning letters within 2 months of incidents, and amendments to the Code of Practice for Residential Care Homes (Elderly Persons).