



律政司
Department of
Justice

2020

Prosecutions
Hong Kong
香港刑事檢控



20

**PROSECUTIONS
HONG KONG**
香港刑事檢控

20

律政司司長

鄭若驊資深大律師

鄭司長：

謹呈上刑事檢控科 2020 年工作回顧。

本科在 2020 年可謂深受考驗。我們處理的案件愈見複雜，工作持續受到公眾監察，檢控決定亦屢受質疑。無可否認，疫情改變了大家的生活方式，也擾亂了工作秩序。

儘管面對種種困難，本科仍然堅定不移，致力維持優質高效的檢控服務，令我引以為榮。我們的檢控人員專業盡責，克盡厥職，繼續秉持《基本法》第六十三條賦予的獨立檢控權，主管刑事檢察工作，不受任何干涉。

我們明白，假如市民清楚了解我們的工作，刑事司法體系就可以更有效運作。要促進和維持市民對我們工作的認知，必須讓他們認識刑事司法程序並且接收準確持平的刑事案件資訊。我們定會竭誠為市民提供公平公正的檢控服務，致力爭取公義。

司長和本科所有同事一直竭力用心支持本科彰顯法治，謹此向你們致以謝忱。



刑事檢控專員

楊美琪

2021 年 12 月 22 日

The Honourable Teresa CHENG Yeuk-wah, GBM, GBS, SC, JP
Secretary for Justice

22 December 2021

Dear Secretary for Justice,

I am pleased to submit to you the Yearly Review of the Prosecutions Division for 2020.

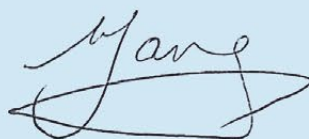
2020 was a remarkably challenging year. The complexity of the cases we handled continued to rise. Our work was under constant public scrutiny. There were questions on our prosecutorial decisions. The pandemic changed the way of life as we knew it and disrupted the work setting.

I take pride to say that, despite all the difficulties, our Division demonstrated its adamant commitment to maintaining an effective and efficient prosecution service. Our prosecutors worked with firm determination to discharge the duties with professionalism and dedication. We continue to uphold the prosecutorial independence conferred upon the Department of Justice by Article 63 of the Basic Law to control criminal prosecutions free from any interference.

We acknowledge that the effective operation of the criminal justice system could be enhanced if the community has a clear understanding of our work. That understanding can only be maintained if the community is educated about the criminal justice process and receives fair and accurate information about criminal cases. In our fight for justice, we vow to provide the community with a prosecution service which is fair and impartial.

I take this opportunity to express my gratitude to you and all my colleagues for the unfailing support to the Division in upholding the rule of law.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Maggie Yang', with a stylized, flowing script.

(Maggie Yang)
Director of Public Prosecutions

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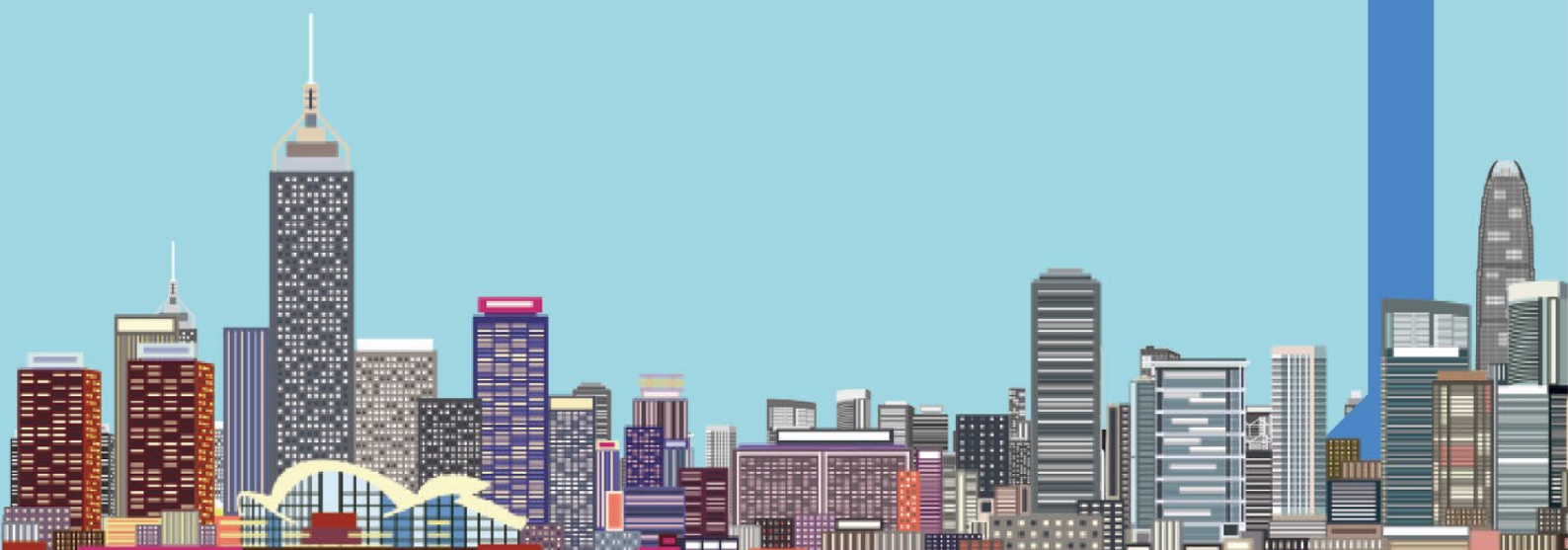
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刑事檢控專員的序言

Director's Overview



楊美琪 刑事檢控專員
Maggie Yang Director of Public Prosecutions

2020 年為本科帶來了空前的挑戰，我們本着堅定的熱誠和意志，奮力克服。我亦在刑事檢控專員的新崗位上竭力伸張公義，堅守信念，為公眾提供優質的檢控服務。

我們在 2020 年面對的根本挑戰，是處理的案件性質愈來愈具爭議性。在部分案件，特別是一些政治敏感的案件中，我們的檢控決定往往受到社會上不同政治光譜人士無理、偏頗的批評。最遺憾是有人指控我們作出“政治檢控”，或認為本司提出某項檢控是由於外界干預或施壓所致。在此背景下，更須突顯本科的獨立自主，因此本年度的工作回顧正好以“無懼無私、不偏不倚地伸張公義”作為主題。

本司負責香港的刑事檢控工作。在履行此職能時，本司享有受憲法保障的獨立性。香港《基本法》第六十三條訂明，本司“主管刑事檢察工作，不受任何干涉”。檢控獨立經此確立，檢控人員可按既定的規範執行職務，無懼受到政治干預，或任何不當或不必要的壓力左右。

檢控人員向來以最高的專業水平處理刑事案件，時刻把持同等尺度，不偏不倚地秉行公義。不論案件性質，所有檢控決定均嚴格依據法律、《檢控守則》和證據作出，不受任何干預。本司就每宗案件決定檢控與否時，必須就所得證據和適用法律進行客觀、不偏不倚的專業評估。除非有足夠可接納的證據支持有合理機會達至定罪，否則不會提出檢控。既有足夠證據提出檢控，部門才會考慮檢控是否符合公眾利益。所有檢控決定均嚴格依據這些原則作出，被告人的政治立場與我們是否提出檢控毫不相干，也完全不在考慮之列。

執法機關負責調查工作，在完成調查後，會視乎需要把案件連同蒐集所得的證據轉介本司，然後由檢控人員作出獨立的決定，包括是否提出檢控。雖然我們或會向執法機關釐清關於調查的事宜，但檢控決定是由本科作出，全然獨立公正。眾所明瞭，律政司主管刑事檢察工作，不受任何干涉。

The year of 2020 presented unprecedented challenges to the Division. The Division strived to overcome the challenges with dedication and determination. I am committed to serving justice in the new role as the Director with the conviction of maintaining an excellent prosecution service for the public.

A fundamental challenge we faced in 2020 was the increasingly controversial nature of the cases we handled. In some of the cases especially those politically sensitive ones, our prosecutorial decisions were often subject to baseless and biased criticisms from different political spectrum of the society. Most regrettably, there were accusations of “political prosecution”, or suggestion that a particular prosecution was instituted because of interference or pressure from party outside the Department. Against such backdrop, it is all the more important to highlight the independence of the Division, hence the theme of the year’s review, that is, “Serving Justice without Fear, Favour or Prejudice”.

The Department is responsible for the conduct of criminal proceedings in Hong Kong. In the discharge of that function, the Department enjoys an independence which is constitutionally guaranteed. Article 63 of the Basic Law of Hong Kong stipulates that the Department “shall control criminal prosecutions, free from any interference”. Such entrenched prosecutorial independence enables prosecutors to discharge their duties within secure parameters. Prosecutors act independently without the fear of political interference or improper or undue influence.

Prosecutors have always adhered to the highest of professional standards in handling criminal cases for justice to be administered with equal measure and in an even-handed manner at all times. Regardless of the nature of the cases, all prosecutorial decisions have always been made strictly in accordance with the law, the Prosecution Code and evidence, free from any interference. In making the decision of whether or not to prosecute in each case, the Department must make an objective, unbiased and professional assessment of the available evidence and applicable law. Unless there is sufficient admissible evidence to support a reasonable prospect of conviction, no prosecution shall be commenced. Only if there is sufficient evidence to initiate a prosecution, the Department will then consider whether it is in the public interest to do so. The decisions on prosecution are made strictly in accordance with these principles. The political stance of the defendant is completely irrelevant and has no place at all in making our prosecutorial decisions.



現今世代，刑事案件資料可輕易取得並廣泛流傳，檢控決定經常受到傳媒和公眾嚴厲監察。本科檢控人員更曾遭某些市民惡意無理謾罵。檢控人員能夠立場堅定，繼續果敢地履行“秉行公義者”的角色，尤為必要。檢控決定往往引起爭議，檢控人員必須無畏無懼，也要性格剛強，能承受各方批評，不管這些批評是如何嚴厲或令人難堪。檢控人員對案件作出判斷時，絕不能屈服於政治、傳媒或公眾的壓力。

對本科來說，繁重的工作仍是主要的挑戰。我們提出的覆核刑罰申請日益增多，正是一例。依據《刑事訴訟程序條例》第81A條，律政司司長可就上訴法庭以外任何法庭所判處的刑罰，基於該刑罰原則上錯誤或明顯不足，向上訴法庭申請覆核。2020年，我們共提出17宗此等覆核刑罰申請，比2018年及2019年分別多出六宗和四宗。值得一提的是，在這17宗申請中，有14宗關乎公眾秩序活動。上訴法庭裁定該14宗覆核全數得直，改判別的刑罰。我們本着政治中立的態度，客觀專業地評估案件後，才決定提出覆核刑罰申請，並已審慎考慮相關法律和判刑原則。

The law enforcement agencies conduct investigation. After completion of the investigation, if needed, they refer the cases to the Department with the evidence gathered. Our prosecutors then make independent prosecutorial decisions including whether a prosecution shall be instituted. Whilst we may seek clarifications from law enforcement agencies regarding matters of investigation, the prosecutorial decision is made by our Division totally independently and impartially. There has been clear understanding that our Department shall control criminal prosecutions, free from any interference.

In the present age where information of criminal cases is easily accessible and widely circulated, prosecutorial decisions are constantly under the critical scrutiny of the media and the public. There were even occasions where our prosecutors were subject to malicious and baseless verbal abuse from certain members of the public. It is all the more important that prosecutors must be able to stand firm and continue to perform our role with fortitude as “minister of justice”. Fearlessness is an essential quality of prosecutors, as prosecutorial decisions are often controversial and the prosecutor must have the strength of character to withstand criticism from whatever quarter, no matter how strident or painful. The judgment of the prosecutor on a case must never be overborne by political, media or public pressure.

Heavy caseload remained a major challenge to the Division. An example is the growing number of applications for review of sentence we initiated. Pursuant to section 81A of the Criminal Procedure Ordinance, the Secretary for Justice may apply to the Court of Appeal for the review of sentence passed by any court, other than the Court of Appeal, on the ground that the sentence is wrong in principle or manifestly inadequate. In 2020, a total of 17 applications for such review of sentence were initiated, up from 6 and 4 of such applications in 2018 and 2019 respectively. It is noteworthy that, out of these 17 applications, 14 of them were related to public order events. The Court of Appeal allowed all 14 of them and substituted a different sentence. The decision to initiate applications for review of sentence were made after objective and professional assessment of the cases in an apolitical manner and careful regard to the laws and principles of sentencing.

During the year, the COVID-19 pandemic had brought exceptional challenges to Hong Kong. The Government introduced resolute and rigorous measures in response. Compulsory quarantine orders were imposed on persons arriving in Hong Kong from specified places, unless the prescribed exemptions were applicable. Contravention of the quarantine requirement would be a criminal offence.

年內，2019 冠狀病毒病疫情為香港帶來前所未有的挑戰。政府採取果斷和嚴厲的措施應對，向從指明地區到港的人施加強制檢疫令，只有訂明的豁免適用者除外。違反檢疫規定屬刑事罪行。

嚴格遵從檢疫令對香港應對疫情至為重要。刑事司法制度在這方面擔當核心角色。就涉嫌違反檢疫令的案件，執法機關會進行調查和蒐集證據，其後會在適當情況下把案件轉交本科作出檢控決定。儘管疫情擾亂了工作環境，本科的檢控人員迅速應對，就檢控決定向執法機關作出指示，並妥當和從速管理檢控案件。在一些案件中，違反檢疫規定而被定罪的被告被判監禁數星期。這向社會傳達清晰的阻嚇訊息：違反檢疫令是嚴重罪行，此種行為不得容忍。本科的檢控人員致力維持有效的刑事司法制度，決心克服危機。

檢控官作為司法侍者，履行重要公職。我們要決定是否對被告人提出檢控，並進行檢控程序。我們完全認同有需要維持公眾對刑事司法制度的信心，而社會對我們維持公平有效的刑事司法制度寄予厚望。

我們不會迴避責任，定當以最高的專業標準處理刑事案件。我會確保本科檢控人員接受最佳培訓，並得以擴闊視野。特別是，本科檢控人員會在更多審訊和上訴中出庭檢控，從而提升訟辯技巧，年資較淺的檢控官亦會得到適當的指引。本科也會繼續舉辦研討會，讓檢控人員了解法律的最新發展。作為新措施的一部分，我們已安排本科資深檢控人員與科內其他成員分享見解和經驗，以期鼓舞和啟發年輕一代。

法治、司法和檢控獨立，以及發表自由等基本權利，是香港的核心價值。本科致力維護這些價值，在履行檢控職責時無畏無懼、公平公正、不偏不倚。在同事堅定不移的支持下，我確信本科定會迎難而上，繼續持正不阿，伸張公義。

Strict compliance with quarantine orders is of paramount importance in Hong Kong's fight against the pandemic. The criminal justice system has a central role to play in this respect. In suspected cases of contravention of quarantine orders, the law enforcement agencies would conduct investigations and gather evidence. Thereafter, if appropriate, some of these cases would be referred to our Department for making prosecutorial decisions. Notwithstanding the disruption posted by the pandemic to the work setting, our prosecutors responded rapidly in instructing the law enforcement agencies on prosecutorial decisions and managed the prosecutions properly and expeditiously. In some cases, for the defendants who were convicted of contravening the quarantine requirements, they were sentenced to imprisonment for weeks. This serves as a clear deterrent message to the community that breaching the quarantine orders is a serious offence and such conduct would not be tolerated. Our prosecutors are determined to emerge from the crisis and committed to maintaining an effective criminal justice system.

Public prosecutors, being servants of justice, perform an important public responsibility. We make decision on whether or not to institute prosecution of a defendant, and to conduct prosecution. We fully acknowledge the need to maintain public confidence in the administration of criminal justice, and that the community has a high expectation on us in maintaining an effective and fair criminal justice system.

We do not shy away from our responsibility to apply the highest of standards in the handling of criminal cases. I will see to it that our prosecutors will receive the best training and exposure. In particular, our prosecutors will prosecute more trials and appeals to enhance their advocacy skill. Appropriate guidance will be provided to junior prosecutors. Our Division will also continue to provide seminars to keep prosecutors abreast of the latest development of the law. As part of the new initiatives, we have arranged our veteran prosecutors to share their insights and experiences with other members of the Division with the aim of inspiring and enlightening the younger generations.

The rule of law, judicial and prosecutorial independence and fundamental rights such as freedom of expression are the core values of Hong Kong. The Division is committed to safeguard these values and to discharge the prosecutorial duties fearlessly, fairly and without prejudice. With the strong and unfailing support of my colleagues, I have no hesitation that our Division will rise to the challenges and continue to deliver justice with integrity.

委任司法人員

Judicial Appointment





劉淑嫻裁判官

劉淑嫻女士於 1997 年加入律政司，擔任法庭檢控主任。劉女士從檢控工作中累積經驗，加上律政司提供全面而廣泛的培訓，令她對法律事務產生濃厚興趣，而這影響她其後在法律領域的發展。

在 1998 年，她獲派往不同裁判法院的檢控小組，負責多項不同的法庭檢控職務，包括檢控案件和出庭檢控。她在任職法庭檢控主任期間繼續進修法律，最終取得律師資格。她其後以事務律師身分私人執業，並於 2012 年加入司法機構出任特委裁判官。

在 2020 年，她進一步獲委任為裁判官。

Ms Lau Suk-han

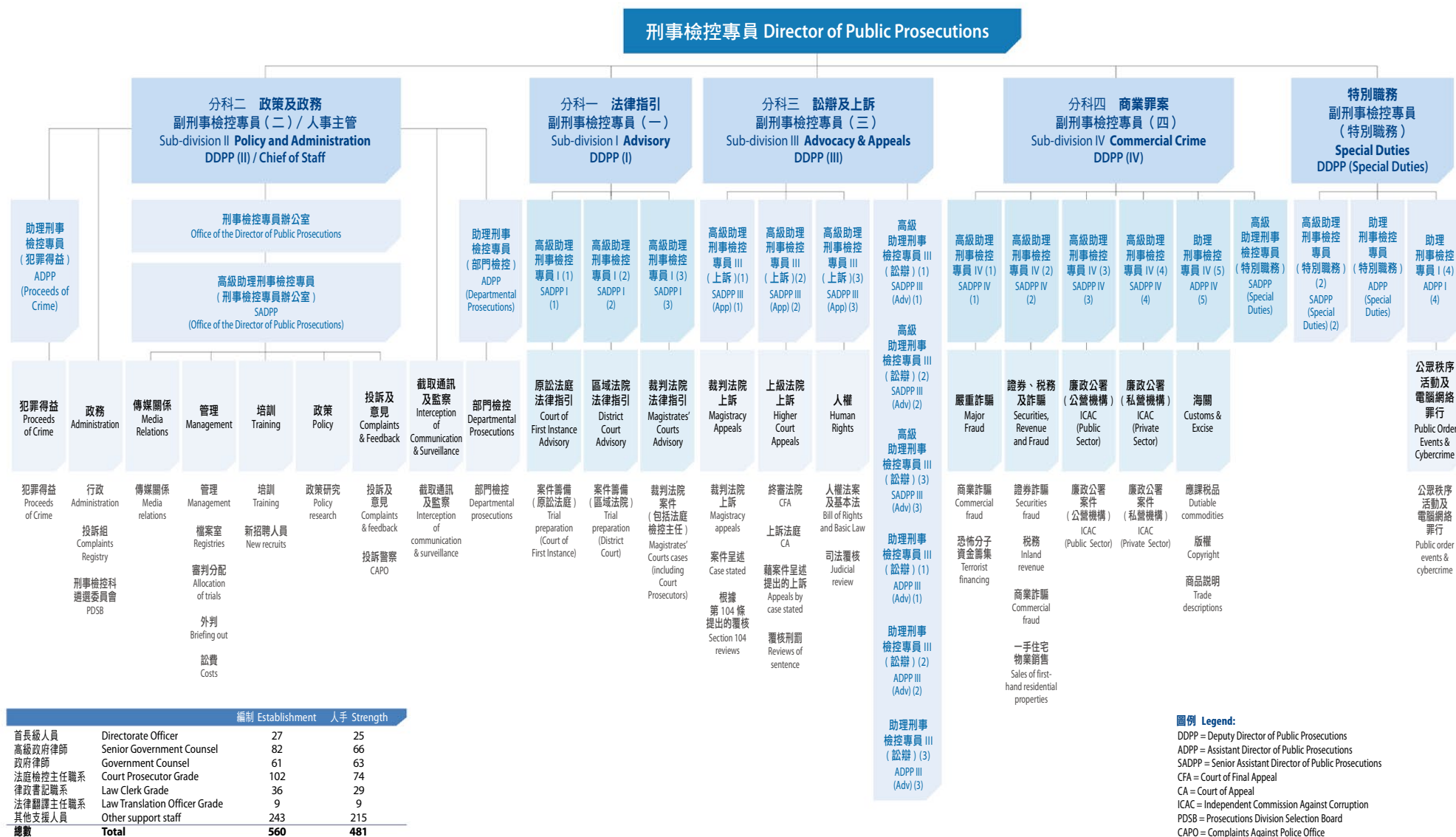
Ms Lau Suk-han joined the Department of Justice as a Court Prosecutor in 1997. Her prosecutorial experience and the thorough and wide ranging training provided by the Department nurtured Ms Lau's interest in legal matters and were important factors in the development of her legal career.

In 1998, she was posted to the Prosecutions Team of several Magistrates' Courts, where she took up a wide range of court duties, including prosecuting cases and discharging court duties. During her work as a Court Prosecutor, she continued her legal education and ultimately qualified as a lawyer. Then she privately practiced as a solicitor and joined the Judiciary as a Special Magistrate in 2012.

She was further appointed to the position of Magistrate in 2020.

架構及職責 Structure and Duties

刑事檢控科組織圖表 Prosecutions Division Organization Chart



服務承諾

本科負責向執法機關提供有關刑事方面的法律指引，並代表律政司司長行使《基本法》第六十三條規定的酌情權，以決定是否提出刑事訴訟。本科並負責於香港各級法院進行一切刑事案件的主控工作。

本科承諾如下：

- 在刑事訴訟程序方面執行律政司的檢控守則；
- 就提出和進行刑事訴訟的決定，周詳考慮所有有關事宜；
- 在接獲執法機關要求提供法律指引時，於 14 個工作天內作覆；如問題較為複雜，則於 14 個工作天內給予初步回覆，說明估計可於何時提供指引；如投訴警察課要求提供指引，於法律程序完成並取得所有資料後的 14 天內作覆；
- 在法院所定的期限內就案件有關事宜提供法律指引；
- 在裁判法院命令將被控人交付審判後七天內，擬備公訴書並送交原訟法庭；
- 在裁判法院命令將案件移交區域法院的日期後 14 天內，擬備控罪書並交付區域法院司法常務官；
- 在刑事訴訟中，恪守充分而適當地向辯方披露資料的責任，尤其遵行與香港大律師公會和香港律師會就送達文件所達成的協議；
- 按照《罪行受害者約章》規定，將不提出檢控的決定通知罪行受害者並處理他們的查詢；以及
- 在接獲關於檢控政策或決定的查詢時，於 14 個工作天內作覆；如果未能在這限期內詳盡作覆，也會給予初步回覆。

Performance Pledge

The Division advises law enforcement agencies in relation to criminal matters and exercises on behalf of the Secretary for Justice the discretion of whether or not to bring criminal proceedings, in accordance with Article 63 of the Basic Law. It also has conduct of all criminal cases in the courts of Hong Kong.

Our pledges are:

- To apply the Prosecution Code of the Department of Justice in relation to criminal proceedings;
- To give thorough consideration to all matters relevant to the making of decisions in relation to the institution and conduct of criminal proceedings;
- Upon the receipt of a request from a law enforcement agency for legal advice, to provide such advice within 14 working days, and in more complex cases to provide an interim reply within 14 working days with an estimated time within which the advice will be provided; for requests from Complaints Against Police Office of the Police, to provide information about court proceedings within 14 days after all materials are available upon completion of those proceedings;
- To provide legal advice in matters connected with court cases within the time limit set by the courts;
- To prepare and file indictments in the Court of First Instance within 7 days of committal of the accused in the Magistracy;
- To prepare and deliver charge sheets to the Registrar of the District Court within 14 days after the date of the order of transfer of the case from the Magistracy to the District Court;
- To rigorously comply with our obligation to make full and proper disclosure of material to the defence in criminal proceedings and in particular to abide by agreements reached with the Hong Kong Bar Association and the Law Society of Hong Kong in respect of the service of documents;
- To inform victims of crime of the decision not to prosecute, and to attend to their enquiries, in accordance with the Victims of Crime Charter; and
- To reply to enquiries on matters related to prosecution policy or decision within 14 working days of receipt of such enquiries, and to issue an interim reply if a substantive reply is not available within this period.

分科——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 冠狀病毒肺炎疫情實施“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，包括以金屬椅襲擊其頭部；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“連儆牆”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齡以致人手緊絀，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.

分科二—政策及政務

Sub-division II - Policy and Administration



分科二由刑事檢控專員辦公室、犯罪得益組、部門檢控組，以及行政及支援組別組成，職責範疇多元化。在 2020 年，本分科由副刑事檢控專員兼人事主管何詠光先生領導。

在 2020 年，本分科的主要挑戰無疑是 2019 冠狀病毒病襲港。本分科各組別通力合作，就草擬和執行抗疫法例事宜為各決策局及執法機關提供法律意見，以支持政府的抗疫工作。此外，在法庭程序一般延期期間及政府僱員在家工作的安排實施期間，本分科與有關各方保持緊密聯繫，確保必要的公共服務不受干擾，運作如常。

本分科各組別的其他工作重點載述如下：

刑事檢控專員辦公室

刑事檢控專員辦公室（專員辦公室）致力促進刑事檢控科日常運作的成效，確保本科時刻全力以赴，有效率地履行職務。有關工作由專員辦公室轄下各組別負責處理。

管理組

管理組主要職責包括把法庭案件分派給合適的科內檢控人員或外判律師進行檢控，以及把尋求法律指引的個案轉交具備最適當專門知識的檢控人員處理。管理組經理須以謹慎敏銳的態度監督分工，確保案件以快捷專業的方式妥善處理。

在 2020 年，具爭議的複雜敏感案件數目仍然偏高，當中包括涉及法律或執法權力的行使是否合憲的案件。本組必須格外謹慎，任用合適且經驗豐富的律師處理此類案件，以確保本科不負所望，服務保持高度專業的水平。

政策組

政策組主要職責是就擬訂新法例和修訂現行法例所產生的檢控政策相關問題，向政府各決策局提供法律意見。有關工作通常涉及前所未有的複雜法律問題，並且影響深遠。

Sub-division II, comprising the Office of the Director of Public Prosecutions, the Proceeds of Crime Section, the Departmental Prosecutions Section and the Administration and Support Units, has a diverse portfolio of work. In 2020, the sub-division was led by Mr Paul Ho, Deputy Director of Public Prosecutions cum Chief of Staff.

The primary challenge faced by the Sub-division in 2020 was no doubt the COVID-19 epidemic in Hong Kong. Different Sections of the Sub-division worked together closely to support the Government's fight against COVID-19 by, amongst other things, the provision of legal advice to policy bureaux and law enforcement agencies on the drafting and enforcement of anti-epidemic legislation. Also, during the General Adjourned Period for court proceedings and the imposition of work from home arrangement for Government employees, the Sub-division liaised closely with all relevant parties to ensure no disruption of essential public services.

Other highlights of the work of different Sections of the Sub-division are set out below.

Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions (ODPP) is dedicated to facilitating the effective day-to-day operation of the Prosecutions Division and ensuring that the Division is always on its mettle to discharge its functions efficiently. These matters are handled by individual units under the ODPP.

Management Unit

One of the primary duties of the Management Unit is to assign court cases to suitable in-house prosecutors or fiat counsel to prosecute, and to refer requests for legal advice to prosecutors who have the most appropriate expertise to deal with them. The Unit Manager has to monitor and supervise the assignment of duties carefully and sensitively to ensure that the cases would be handled properly, efficiently and professionally.

In 2020, the number of complex and sensitive cases involving controversial issues, such as constitutional challenge to the law or the exercise of law enforcement powers, remained high. The Unit had to exercise additional care in engaging suitable and experienced counsel to handle such cases to ensure that the high level of professional competency expected of the Division is maintained.



本組在 2020 年曾就多項擬訂法例提供意見，重要例子包括：

- (1) 根據《預防及控制疾病條例》（第 599 章）訂立的附屬法例；
- (2) 為落實刑事法律程序中傳聞證據法律改革的《2018 年證據（修訂）條例草案》；
- (3) 《2019 年吸煙（公眾衛生）（修訂）條例草案》；
- (4) 《2021 年稅務（修訂）（合資格合併、指明資產及電子報稅表）條例草案》；
- (5) 《專營的士服務條例草案》；
- (6) 提高違反職業安全與健康相關法例罰則的立法建議；以及
- (7) 引入窺淫、未經同意下拍攝私密處及相關罪行的立法建議。

另一方面，曾獲本分科提供意見的多條條例草案，包括《法院程序（電子科技）條例草案》和《2018 年旅館業（修訂）條例草案》，經立法會審議後獲得通過。

本組也就多個範疇的事宜定期向政府各決策局及部門提供意見，包括 (i) 制定或修訂執法的政策及常規以回應某些罪行的普及化、罪犯層出不窮的犯案手法和法律的變更；以及 (ii) 檢視各種聲稱造成損害的新興行為有何刑責。

本組亦負責擬備內部法律通告，以及代表部門出席青少年罪犯問題常務委員會和關注家庭暴力工作小組的恆常會議。

Policy Unit

The main duty of the Policy Unit is to give legal advice to different government bureaux on issues relating to prosecution policy arising from proposed new legislation and amendments to existing legislation which usually involve complex and novel legal issues, and have far-reaching implications.

Notable proposed legislation which the Unit had advised upon in 2020 included:

- (1) Subsidiary legislation made under the Prevention and Control of Diseases Ordinance (Cap. 599);
- (2) Evidence (Amendment) Bill 2018, which seeks to implement the law reform on hearsay evidence in criminal proceedings;
- (3) Smoking (Public Health) (Amendment) Bill 2019;
- (4) Inland Revenue (Amendment) (Qualifying Amalgamations, Specified Assets and Electronic Returns) Bill 2021;
- (5) Franchised Taxi Services Bill;
- (6) Legislative proposal to raise the penalties for contraventions of occupational safety and health-related legislation; and
- (7) Legislative proposal to introduce offences on voyeurism, non-consensual photography of intimate parts and related offences.

On the other hand, a number of bills which the Sub-division advised on, including the Court Proceedings (Electronic Technology) Bill and Hotel and Guesthouse Accommodation (Amendment) Bill 2018, went through the scrutiny of the Legislative Council and were passed successfully.

The Unit also regularly gives advice to government bureaux and departments on wide-ranging issues including (i) formulation or revision of enforcement policies and practice for tackling proliferating offences, changing *modus operandi* of offenders, and changes in the law; and (ii) examination of the criminality of new kinds of alleged mischiefs.

The Unit is also responsible for drafting internal Legal Circulars and represents the Department at regular meetings of the Standing Committee on Young Offenders and the Working Group on Combating Domestic Violence.

Training Unit

Advocacy is the core business of the Prosecutions Division. The Division aims to equip prosecutors with the necessary skills to

培訓組

刑事檢控科以訟辯為核心工作，致力培訓檢控人員，使他們具備所需技巧，以高度專業水平執行檢控工作，而有關事宜由培訓組負責。

在 2020 年，本組繼續舉辦一系列培訓課程（包括持續進修課程），並邀請多名刑事法律界的嘉賓講者及各領域的法證專家，主講刑事檢控科舉辦的課堂講座，課題涵蓋加密貨幣、野生生物、視頻及影像分析以至易受傷害證人。

本組在 2020 年為新入職的檢控官和見習律政人員舉辦了兩班刑事訟辯課程。該密集式課程為期 12 週，包括 (1) 一系列課堂講座，內容集中講解刑事法律、常規及程序的一些重要議題；(2) 模擬法庭實習訓練；以及 (3) 派駐裁判法院實習，其間學員會先在督導下執行案件檢控工作，然後才自行處理有關工作。

我們在 2020 年 1 月為受聘於政府其他部門和法定機構的檢控人員舉辦為期 14 天的檢控人員培訓課程，共有 45 名來自 22 個執法機關的人員參加。課程內容包括講座、法庭旁聽聆訊及模擬法庭實習訓練。

傳媒關係組

鑑於公眾對刑事司法制度的監察日益嚴謹，並對案件的檢控深表關注，傳媒關係組須在 2020 年投入更多人力資源，處理傳媒和市民大眾就刑事案件急增的查詢，以符合司法制度公開公正的要求，並顧及涉案各方的尊嚴和私隱權。

投訴及意見組

在 2020 年，投訴及意見組共處理 449 宗對本科工作的投訴及查詢。本組以公開、公平、公正的專業態度調查投訴，並採取適當行動跟進每宗個案所提事項。

除了處理投訴及查詢，本組也蒐集和聆聽意見。我們對收到的每項意見和關注，不論褒貶毀譽，均予重視，並相信這可增進本科與公眾之間的溝通，從而加強公眾對我們的工作和整體刑事司法制度的信心。

conduct prosecutions to the highest professional standard and the Training Unit is responsible for it.

In 2020, the Unit continued to organise a series of training programmes including the Continuing Education Programmes. Distinguished guests in the field of criminal law, as well as experts in various forensic disciplines, were invited to speak in lectures on topics ranging from cryptocurrency, wildlife, video and image analysis to vulnerable witnesses.

Two rounds of the Criminal Advocacy Course were held for our newly recruited Public Prosecutors and Legal Trainees in 2020. The intensive 12-week course comprised (1) a series of lectures focusing on important topics of criminal law, practice and procedures, (2) mock court exercises, and (3) attachment to the Magistrates' Courts during which participants prosecuted cases firstly under supervision and then on their own.

For Departmental Prosecutors employed by other government departments and statutory bodies, a 14-day Departmental Prosecutors Training Course was held for them in January 2020. A total of 45 participants from 22 law enforcement agencies attended the 14-day course, which comprised lectures, court visit, and mock court exercises.

Media Relations Unit

Due to the heightened public scrutiny of the criminal justice system and the immense public attention to prosecution of cases, the Media Relations Unit had to engage extra manpower in 2020 to deal with the surge in the number of enquiries made by the media and the general public regarding criminal cases with a view to meeting the requirement of open justice whilst at the same time balancing the dignity and the right to privacy of the parties concerned in the cases.

Complaints and Feedback Unit

In 2020, the Complaints and Feedback Unit handled a total of 449 cases of complaints and enquiries about the work of the Division. The Unit investigates into the complaints and takes appropriate follow-up actions to address the concerns raised in each individual case professionally in an open, fair and impartial manner.

Apart from handling complaints and enquires, the Unit also receives and listens to feedback. We value each and every view or concern conveyed to us, be it positive or negative. We believe communication between the Division and the general public can be strengthened so as to boost public confidence in our work and the administration of criminal justice as a whole.

犯罪得益組

香港作為環球金融中心及國際離岸人民幣業務樞紐，是世上最開放自由的經濟體之一，在金融服務、商貿、物流、專業服務等領域，均極具優勢。無疑，此優勢可能使香港的金融體系容易被濫用，以清洗犯罪得益。為保護香港的金融體系免遭犯罪分子利用，健全的限制和沒收機制可發揮重要作用，阻遏歹徒轉移犯罪得益，迫使他們交出非法收益，以及防止他們將有關得益再投資於其他犯罪行為。

香港設有一套完備的法律，以打擊洗黑錢及恐怖分子資金籌集活動。有關法例包括《販毒（追討得益）條例》（第 405 章）和《有組織及嚴重罪行條例》（第 455 章），兩者賦權法庭限制和沒收來自各種販毒和可公訴罪行的非法得益；針對恐怖分子財產的《聯合國（反恐怖主義措施）條例》（第 575 章）；向金融機構及其他實體施行“客戶盡職審查”規定的《打擊洗錢及恐怖分子資金籌集條例》（第 615 章）；以及就大量貨幣及不記名可轉讓票據的跨境流動設立申報及披露制度的《實體貨幣及不記名可轉讓票據跨境流動條例》（第 629 章）。

年內，本組人員努力不懈，績效斐然。2019 冠狀病毒病爆發後，司法機構實施法庭程序一般延期安排，儘管如此，我們仍合共取得 29 項限制令和 24 項沒收令，並凍結價值港幣 2.68 億元的可變現財產。法院命令沒收罪犯的非法得益總額為港幣 1.27 億元，經變現並撥入政府一般收入的款額達港幣 1.64 億元。下文概述經本組處理的一些值得注意的案件。

在高院刑事案件 2013 年第 561 號一案中，一所香港上市公司的主席在第二被告人和第三被告人協助下，透過複雜的公司架構隱瞞其在美國猶他州一些油田的實益權益。該等油田其後以極高利潤的價格售予該上市公司。該等被告人經審訊後被裁定多項串謀詐騙及洗黑錢罪名成立。在沒收聆訊期間，辯方辯稱該等被告人收取的部分款項不應計算為他們的利益。法庭不接納被告人的陳詞，並向第二被告人和第三被告人發出沒收令，涉及的款額分別為港幣 900 萬元和港幣 300 萬元。

Proceeds of Crime Section

As a global financial centre and an international offshore Renminbi business hub, Hong Kong has one of the world's most open and free economies and is highly competitive in the areas of financial services, business and commerce, logistics and professional services etc. This prestigious status of Hong Kong inevitably exposes the territory's financial system to potential misuse in laundering crime proceeds. To protect the financial system from being exploited by criminals, a robust system of restraint and confiscation plays an important part in frustrating the movement of crime proceeds, disgorging criminals of their illicit gains and preventing the proceeds from being reinvested to facilitate further crimes.

Hong Kong has a comprehensive set of anti-money laundering and counter-terrorist financing (“AML/CTF”) laws. The relevant legislation includes the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455), which empower the Court to restrain and confiscate illicit proceeds emanating from a range of drug trafficking and indictable offences; the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), which targets terrorist property; the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), which imposes a “Customer Due Diligence” requirement on financial institutions and other entities; and the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629), which introduces a declaration and disclosure system for cross-border movement of large quantities of currency and bearer negotiable instruments.

The hard work of the Section bore fruit in 2020. Notwithstanding the General Adjournment Period for court proceedings in response to the COVID-19 pandemic, a total of 29 restraint orders and 24 confiscation orders were successfully obtained. HK\$268 million worth of realisable property was frozen, and the total amount of illicit proceeds ordered to be confiscated from criminals was HK\$127 million. A total of HK\$164 million was realized and paid to the general revenue. Some notable cases handled by the Section are summarised as below:

In HCCC 561/2013, the chairman of a Hong Kong listed company, assisted by D2 and D3, concealed his beneficial interest in some oil fields in Utah, USA through a convoluted corporate structure. The oil fields were subsequently sold to the listed company for a substantial profit. The defendants were convicted after trial of various counts of conspiracy to defraud and money laundering. During the confiscation hearings, the defence contended that some of the payments received by them should not be counted towards their benefit. The Court rejected their submissions and made a



在區院刑事案件 2019 年第 83 及 463 號（綜合）一案中，第一被告人利用其兩名外籍家庭傭工安排他人賣淫，並透過實際控制多個銀行戶口清洗犯罪得益。她承認串謀依靠他人賣淫的收入為生及三項洗黑錢的控罪。在沒收聆訊期間，辯方辯稱營業分類帳上記錄的利益總額應扣減合法按摩業務所得及攤分予同案被告人和性工作者的盈利。法庭不接納該等陳詞，並向第一被告人發出沒收令，沒收其港幣 3,319 萬元。從限制措施效力充足和沒收數據來看，本組人員在凍結和追討資產方面的工作，卓有成效。

除了執法，本組人員也積極與海外同業合作，聯手打擊洗黑錢及恐怖分子資金籌集活動。香港是財務行動特別組織（FATF）和亞洲／太平洋反清洗黑錢組織（APG）的活躍成員。FATF 是跨政府組織，致力研究打擊洗黑錢及恐怖分子資金籌集活動的措施，並作出建議；而 APG 則是區域組織，着重確保其成員有效實施打擊洗黑錢及恐怖分子資金籌集活動的國際標準。在 2020 年 2 月，霍莎莎女士以視像會議方式參加在巴黎舉行的 FATF 會議，討論虛擬資產和使用數碼身分等對打擊洗黑錢及恐怖分子資金籌集活動帶來的風險。

confiscation order against D2 and D3 in the amount of HK\$9 million and HK\$3 million respectively.

In DCCC 83 & 463/2019 (consolidated), D1 enlisted her 2 foreign domestic helpers to arrange the prostitution of others, the proceeds of which were laundered through various bank accounts under her effective control. She was convicted upon her own pleas of conspiracy to live on earnings of prostitution of other and 3 charges of money laundering. During the confiscation hearing, the defence contended that the total value of benefit as reflected in the business ledgers should be deducted to take into account that some of the proceeds were originated from legitimate massage business, as well as the profit sharing with her co-defendants and the sex workers. The Court rejected those submissions and made a confiscation order against D1 in the amount of HK\$33.19 million. Adequate restraint and confiscation statistics indicate that the effort of members of the Section to freeze and recover assets are proving to be successful.

Enforcement of legislation aside, members of the Section proactively cooperated with overseas counterparts in the joint effort to combat money laundering and terrorist financing ("ML/TF"). Hong Kong is an active member of the Financial Action Task Force ("FATF") and the Asia/Pacific Group on Money Laundering ("APG"). FATF is an inter-governmental body dedicated to examining and recommending AML/CTF measures, whereas APG is a regional body focused on

在 2020 年，香港展開第二次洗黑錢及恐怖分子資金籌集風險評估，目的是識別、了解和更新香港面對的洗黑錢及恐怖分子資金籌集活動風險，然後據此制訂更具針對性的措施。為籌備評估，本組人員與各決策局、執法機關、監管機構、政府部門及私營持份者一直緊密合作。在 2020 年 11 月，李希哲先生、霍莎莎女士和黎健禧先生出席持份者工作坊，討論香港打擊洗黑錢及恐怖分子資金籌集活動的能力，以及各金融和非金融界別的弱點。評估仍在進行中，本組會繼續致力協助本港符合打擊洗黑錢及恐怖分子資金籌集活動的國際標準。

本組人員於年內舉辦多個研討會，讓相關團體掌握有關打擊洗黑錢及恐怖分子資金籌集法例和追討資產方面的最新發展。這些研討會對加強檢控人員與相關團體之間的合作，以有效打擊香港的洗黑錢和經濟罪行，至關重要。

部門檢控組

部門檢控組就多個執法機關調查的案件提供法律指引。該等案件往往因對社會有影響而引起傳媒的興趣。下文選錄本組在 2020 年處理的重要法律範疇或案件。

因應新型冠狀病毒疫情，多項根據《預防及控制疾病條例》（第 599 章）第 8 條訂立的規例在 2020 年獲得通過，以便對不同人士實行檢疫，以及規管在香港進行的商業活動或聚集。年內，本組經常就違反《若干到港人士強制檢疫規例》（第 599C 章）及《外國地區到港人士強制檢疫規例》（第 599E 章）所訂檢疫令的案件提供緊急法律指引，此類案件約有 200 宗。在香港特別行政區訴成見恭介（粉嶺裁判法院刑事案件 2020 年第 586 號）一案中，被告人在檢疫令中提供虛假地址，干犯“明知而提供在要項上屬虛假的資料”罪（即違反第 599C 章第 9 條），被判監禁三個月。在香港特別行政區訴 Ip Kwok-lam（屯門裁判法院傳票案件 2020 年第 6726-6728 號）一案中，被告人從外國返港後獲發檢疫令，卻多次離開檢疫地點，外出購買食品及日用品，被控三項違反第 599E 章所訂檢疫令的罪名，判監共八星期，緩刑 24 個月。

此外，本組也就針對違反《預防及控制疾病（規定及指示）（業務及處所）規例》（第 599F 章）

ensuring its members effectively implement the international standards on AML/CTF. In February 2020, Ms Jennifer Fok attended the FATF meeting held in Paris via videoconferencing to discuss the ML/TF risks of virtual assets and the use of digital identity etc.

In 2020, Hong Kong commenced her second Money Laundering and Terrorist Financing Risk Assessment. The purpose of the assessment is to identify, understand and update the ML and TF risks to which Hong Kong is exposed, which would then form the basis for the formulation of more targeted responses. To prepare for the assessment, members of the Section have been working closely with various policy bureaux, law enforcement agencies, regulatory authorities, government departments and private sector stakeholders. In November 2020, Mr Andrew Li, Ms Jennifer Fok and Mr Lucas Lai attended the stakeholders workshop to discuss the territory's ability to combat ML/TF and the vulnerabilities facing various financial and non-financial sectors. The assessment is still underway and the Section will continue its efforts to facilitate the territory's compliance with international AML/CTF standards.

In keeping the relevant bodies abreast of the current development of the AML/CTF law and asset recovery, members of the Section conducted seminars throughout the year. These seminars are essential in enhancing the joint effort among the Prosecution and the relevant bodies to effectively tackle money laundering and financial crimes in Hong Kong.

Departmental Prosecutions Section

The Departmental Prosecutions Section provides legal advice on cases investigated by various law enforcement agencies. Such cases often attract media interest because of their impact on society. Some of the significant areas of law or cases encountered by the Section in 2020 are set out below.

In view of the coronavirus epidemic, various regulations were passed under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) in 2020 for the quarantine of persons as well as the regulation of business activities or gatherings in Hong Kong. In 2020, the Section has provided legal advice in around 200 cases in relation to the breach of quarantine orders made under the Compulsory Quarantine of Persons Arriving at Hong Kong Regulation (Cap. 599C) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E), often on an urgent basis. In *HKSAR v Sing Kin Kung Kai* FLCC586/2020, the defendant, who had provided a false address on his quarantine order, was sentenced to 3 months' imprisonment for *knowingly giving information that is false in a material particular* contrary to section 9 of Cap. 599C. In *HKSAR v Ip Kwok-lam* TMS

或《預防及控制疾病（禁止羣組聚集）規例》（第 599G 章）的執法行動，向執法機關提供法律指引。在香港特別行政區 訴 郭永健及另七人（東區裁判法院定額罰款傳票案件 2020 年第 5-12 號）一案中，各被告人分別被裁定“參與受禁羣組聚集”罪罪成，判處監禁 14 天，緩刑 18 個月。

疫苗安全對公共衛生至關重要。在香港特別行政區 訴 環亞體檢集團有限公司（觀塘裁判法院傳票案件 2020 年第 7165 號）一案中，被告公司在香港經營化驗業務，並非列載毒藥銷售商或獲授權毒藥銷售商。衛生署接獲消費者投訴，指該公司在本港提供懷疑平行進口的人類乳頭瘤病毒疫苗（又稱“子宮頸癌疫苗”），遂突擊搜查該公司屬下辦事處，搜獲兩箱含有第 1 部毒藥的人類乳頭瘤病毒疫苗。被告公司承認《藥劑業及毒藥條例》（第 138 章）下“管有第 1 部毒藥”的控罪，被裁定罪名成立，罰款港幣 10,000 元。

《保護瀕危動植物物種條例》（第 586 章）所訂罪行的最高刑罰在 2018 年提高後，愈來愈多根據該條例提出檢控的案件提交區域法院審訊。在香港特別行政區 訴 Rasolonirina Marie Yvon Aljymi [2020] HKDC 170 一案中，一名旅客被發現管有行李內的 57 隻活龜，約值港幣 816,555 元。案中被告人承認一項“進口附錄 I 物種的標本”

6726-6728/2020, the defendant, having returned to Hong Kong from a foreign country and being the subject of a quarantine order, left the place of quarantine on different occasions to purchase groceries. He was sentenced to a total of 8 weeks' imprisonment, suspended for 24 months, for 3 counts of breaches in relation to a quarantine order issued under Cap. 599E.

On a related note, the Section also provides legal advice to law enforcement agencies on enforcement actions against breaches of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) or the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G). In *HKSAR v Kwok Wing-kin and 7 Others* ESFS 5-12/2020, the defendants were each convicted of *participating in a prohibited group gathering* and sentenced to 14 days' imprisonment, suspended for 18 months.

Vaccine safety is of paramount importance to public health. In *HKSAR v AMH Medical Diagnostic Group Limited* KTS 7165/2020, the defendant company ran a business of laboratory testing services in Hong Kong and was neither a listed seller of poisons nor an authorized seller of poisons. Acting on complaints lodged by civilian consumers against the company for providing suspected parallel-imported HPV vaccines in Hong Kong, the Department of Health carried out a raid at the company's branch offices where 2 boxes of HPV vaccines containing Part I poison were found. The defendant company was convicted on its own plea and fined HK\$10,000 for *possession of Part I poison* contrary to the Pharmacy and Poisons Ordinance (Cap. 138).



(第一項控罪)和一項“殘酷對待動物”(第二項控罪)的控罪,被裁定罪名成立,判監共兩年。在香港特別行政區 訴 *Tshirobo Confidence* (第一被告)及 *Mathebula Rhulani* (第二被告) [2020] HKDC 210 一案中,第一及第二被告人飛抵香港國際機場轉機時,被發現管有行李內重量分別為 20.17 公斤及 20.41 公斤的犀牛角,各被裁定一項“進口附錄 I 物種的標本”罪罪成,判處監禁 26 個月。

香港土地匱乏,對非法佔用土地的情況採取執法行動尤為重要。在香港特別行政區 訴 *Wong Yu-cho* (粉嶺裁判法院傳票案件 2017 年第 11247 號)一案中,被告人獲批其房屋周邊政府土地的短期租約。在 2016 年 6 月 3 日,地政總署向他送達通知,終止有關租約並要求他在同年 12 月 13 日或之前把土地騰空交出。被告人不予理會,地政總署遂在有關地點再張貼通知,要求被告人在一個月內停止非法佔用土地。被告人既沒有遵從有關通知,也沒有請求延長時限,反而投訴清理行動缺乏理據,而地政總署給予的通知期也短得不合理。被告人未有遵從《土地(雜項條文)條例》(第 28 章)第 6(1)及(4)條所訂的土地通知,經審訊後在 2020 年 6 月 15 日被裁定罪名成立,罰款港幣 30,000 元。

本組也提供法律指引,就違反入境法例的罪行提出檢控。一家職業介紹所提交偽造僱傭合約和虛假文件,代多名申請人申請外籍家庭傭工簽證,入境事務處由 2018 年 3 月起就此進行大規模調查。17 名申請人被裁定“串謀欺詐”、“向入境事務主任作虛假申述”及“違反逗留條件”罪罪成並判處監禁,最高刑期為八個月。此外,在香港特別行政區 訴 *Wong Erni-Wahyuning* [2020] HKDC 379 一案中,區域法院裁定該職業介紹所的董事三項“串謀欺詐”罪及五項“使用虛假文書”罪罪成,判處監禁 43 個月。

A rising number of prosecutions under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) are brought to the District Court following the increase in maximum penalties of offences under the ordinance in 2018. In *HKSAR v Rasolonirina Marie Yvon Aljymi* [2020] HKDC 170, a traveller was found in possession of 57 live tortoises in his luggage, with an estimated worth of HK\$816,555. The defendant was convicted of 1 count of *importing specimens of Appendix I species* (Charge 1) and 1 count of *cruelty to animals* (Charge 2). He was convicted on his own plea and sentenced to a total of 2 years' imprisonment. In *HKSAR v Tshirobo Confidence* (D1) & *Mathebula Rhulani* (D2) [2020] HKDC 210, D1 and D2 were found in possession of 20.17 kg and 20.41 kg of rhino horns in their luggage respectively upon landing at Hong Kong International Airport on transit. They were each convicted of 1 count of *importing specimens of Appendix I species* and sentenced to 26 months' imprisonment.

Given the scarcity of land in Hong Kong, enforcement actions against the unlawful occupation of land is particularly important. In *HKSAR v Wong Yu-cho* FLS 11247/2017, the defendant obtained a short term tenancy for the government land surrounding his house. On 3 June 2016, the Lands Department served him a notice to terminate the tenancy and to require vacant possession be delivered by 13 December 2016. The defendant failed to do so and a further notice was posted on site requiring the defendant to cease the unlawful occupation within 1 month. The defendant failed to comply with the notice and did not ask for any extension of time. Rather, he complained that the clearance was unjustified and Lands Department had given an unreasonably short notice to him. On 15 June 2020, the defendant was convicted after trial for his failure to comply with the land notice under section 6(1) and (4) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and fined HK\$30,000.

The Section also provides legal advice on the prosecution of immigration offences. Since March 2018, the Immigration Department had carried out a large-scale investigation on bogus employment contracts and false documents submitted by an employment agency in applications for foreign domestic helper visas on behalf of a number of applicants. 17 applicants had been convicted of offences including *conspiracy to defraud, making false representations to an immigration officer and breach of condition of stay*, and were sentenced to up to 8 months' imprisonment. In addition, the director of the employment agency was convicted in *HKSAR v Wong Erni-Wahyuning* [2020] HKDC 379 of 3 counts of *conspiracy to defraud* and 5 counts of *using a false instrument* and sentenced to 43 months' imprisonment in the District Court.

分科三一訟辯及上訴

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

因此 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 10 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).

分科四—商業罪案

Sub-division IV - Commercial Crime



隸屬商業罪案分科的律師專門負責各種通常稱為白領罪行的刑事檢控工作，該等罪行包括嚴重詐騙、洗黑錢、證券及稅務詐騙、行賄及貪污，以及與海關有關的罪行。他們就該等罪行的證據是否充足向執法機關提供法律指引，並不時負責其後的審訊和上訴。金融或商業詐騙和行賄或許並非新罪行，但科技發展的運用，加上交易或犯罪活動日益複雜，有時甚或跨越國界，致使把犯案者繩之於法的難度倍增。儘管面對該等挑戰，分科內律師仍致力繼續打擊商業罪案，以維持香港作為世界領先金融中心之一的聲譽。

分科下設五個組別，下文扼述各組別在 2020 年處理的一些值得注意的案件：

分科四第 1 組 — 嚴重詐騙

香港特別行政區 訴 曾彩嫦（刑事上訴案件 2019 年第 330 號）是一宗典型案件，申請人擬備虛假合同和送貨單，以兩宗仿真交易作掩飾，藉以收取兩筆犯罪得益，涉案金額分別為 99,936 美元和 98,143.19 美元。申請人偽裝成售賣紅酒並經營會計業務的精明女商人。法庭得出不可抗拒的推論，即申請人所提供的合同和送貨單均屬偽造。申請人被控兩項處理已知道或相信為代表從可公訴罪行的得益的財產罪，經審訊後被定罪，判處監禁兩年半。上訴法庭駁回她就定罪提出的上訴許可申請。

在香港特別行政區 訴 陳鑑清（刑事上訴案件 2019 年第 230 號）一案中，申請人是擁有一家律師事務所的執業律師。他代表一名男子，協助其以 300 萬港元把一間村屋以欺詐方式出售予其妻子，以從一家金融機構獲得 150 萬港元的按揭，惟從未支付過該 300 萬港元。就申請人在這宗欺詐交易中的角色而言，他因向土地註冊處註冊虛假“買賣協議”和虛假“轉讓契”而被控兩項使用虛假文書罪。申請人還因向金融機構提供該宗交易的虛假“買賣協議”副本，使其批出按揭貸款而被控一項使用偽造文書副本罪。申請人被判處監禁合共八個月，緩刑兩年。上訴法庭駁回申請人就定罪提出的上訴許可申請。

Counsel in the Commercial Crime Sub-division specialize in the prosecution of a wide variety of criminal offences, often referred to as white-collar crimes, ranging from major frauds, money laundering, securities and revenue frauds, bribery and corruption and offences relating to customs and excise. They give legal advice to law enforcement agencies on the sufficiency of evidence in respect of these offences and take up the subsequent trials and appeals from time to time. Financial or commercial fraud and bribery may not be new crimes, but the deployment of technological development coupled with an increase in complexity of transactions or criminal activities, which may at times transcend national boundaries, often render it more difficult for perpetrators to be brought to justice. Despite these challenges, counsel in the Sub-division strive to continue to combat commercial crimes in order to maintain Hong Kong's reputation as one of the world's leading financial centers.

The Sub-division comprises 5 sections and highlights of some notable cases handled by each section in 2020 are set out below:

Section IV(1) – Major Fraud

HKSAR v Tsang Choi-sheung, Wendy CACC 330/2019 was a typical case where the applicant prepared sham contracts and delivery notes so as to receive 2 sums of crime proceeds under the guise of 2 genuine transactions. The sums involved were US\$99,936 and US\$98,143.19 respectively. The applicant portrayed herself as an astute business woman who sold red wine and had her own accounting business. The Court drew the irresistible inference that the contracts and delivery notes produced by the applicant were forged. The applicant was convicted after trial and was sentenced to 2.5 years' imprisonment for 2 counts of dealing with property known or believed to represent proceeds of an indictable offence. The Court of Appeal dismissed her application for leave to appeal against conviction.

In *HKSAR v Chan Kam-ching CACC 230/2019*, the applicant was a practising solicitor who owned a law firm. He acted for a man to facilitate a fraudulent sale of a village house to the latter's wife for HK\$3 million with a view to obtain a mortgage of HK\$1.5 million from a financial institution. The consideration of HK\$3 million was never paid. For his role in this fraudulent transaction, the applicant was charged with 2 counts of using a false instrument for registering a false "Sale and Purchase Agreement" and a false "Assignment" with the Land Registry. The applicant was also charged with 1 count of using a copy of a forged instrument for furnishing the financial institution with a copy of the false "Sale

在香港特別行政區 訴 馬振傑（高院刑事案件 2018 年第 20 號）一案中，被告在一家位於香港的韓國公司任職會計部副經理。他在七年間從公司盜取達 386,955,303.70 港元。被告被控四項盜竊罪。他在韓國經理或董事總經理不知情的情況下，使用他們名下的保安編碼器以網上銀行系統轉帳。一旦款項存入其個人帳戶，被告便把該等款項轉至他的其他銀行帳戶或用以支付其信用卡帳項。被告被陪審團裁定罪成，判處監禁共 15 年。

在香港特別行政區 訴 *Chow Lai-ying, Candy*（區院刑事案件 2019 年第 656 號）一案中，被告是一名重要三合會頭目的妻子，其家人和黨羽經營非法收受賭注網絡。被告在 2013 年 7 月其丈夫被警方拘捕不久之前失去聯絡，於 2019 年 4 月 18 日返回香港時被捕。被告承認四項處理已知或相信為代表從可公訴罪行的得益的財產控罪，在五年七個月間處理的犯罪得益涉及 1.029 億港元。被告被判處監禁共兩年七個月。

分科四第 2 組 — 證券、稅務及詐騙

在香港特別行政區 訴 王安妮（高院刑事案件 2020 年第 113 號）一案中，被告曾於香港一家大學任職教學助理。她承認 16 項詐騙及一項洗黑錢的控罪，被裁定罪名成立。被告聲稱自己從事奢侈品貿易（主要為名貴手錶），並承諾向受害人提供豐厚回報，誘使他們投資其計劃。詐騙及洗黑錢控罪的涉款總額分別為逾 8,100 萬港元及約 1.5 億港元。杜麗冰法官在判刑時形容被告策劃的計劃非常邪惡，令受害人蒙受天文數字的金錢損失。被告被判處監禁 12 年。

在香港特別行政區 訴 同明有限公司（觀塘裁判法院傳票案件 2019 年第 21847 號）一案中，同明有限公司以招標方式出售一發展項目的住宅物業，被控沒有在成交紀錄冊清晰明確列出支付條款（即“提前付清樓價現金回贈”的條款詳情），違反《一手住宅物業銷售條例》（第 621 章）第 59(1)(g) 及 (6) 條。具體而言，被告僅列出該回贈的“名稱”，但並無述明購買相關物業所涉回贈的“百分比 / 金額”。該違例事項對銷售一手住宅物業的透明度和公正性及相關買方的權益有實

and Purchase Agreement” of the said transaction which led to the granting of the mortgage loan. The applicant was sentenced to a total of 8 months’ imprisonment suspended for 2 years. The Court of Appeal dismissed the applicant’s application for leave to appeal against conviction.

In *HKSAR v Ma Chun-kit* HCCC 20/2018, the defendant was a deputy manager of the accounting department of a Korean company in Hong Kong. He stole HK\$386,955,303.70 from the company over a period of 7 years. The defendant was charged with 4 counts of theft. He transferred the sums via online banking system using security tokens held under the name of the Korean managers or managing directors without their knowledge. Once the money was deposited into the defendant’s personal accounts, the sums were transferred to the defendant’s other bank accounts or used to pay his credit-card expenses. The defendant was found guilty by the jury and was sentenced to a total of 15 years’ imprisonment.

In *HKSAR v Chow Lai-ying, Candy* DCCC 656/2019, the defendant was the wife of a prominent triad leader whose family members and associates operated an unlawful bookmaking network. The defendant became out of reach shortly before her husband’s arrest by the Police in July 2013. She was arrested on 18 April 2019 upon her return to Hong Kong. She pleaded guilty to 4 counts of dealing with property known or believed to represent proceeds of an indictable offence and she had dealt with crime proceeds involving HK\$102.9 million for a period of 5 years and 7 months. The defendant was sentenced to a total of 2 years and 7 months’ imprisonment.

Section IV(2) – Securities, Revenue and Fraud

In *HKSAR v Wong On-ni* HCCC 113/2020, the defendant, who was a former teaching assistant of a university in Hong Kong was convicted of 16 counts of fraud and 1 count of money laundering on her own plea. The defendant claimed herself to be engaged in trading luxury goods, mainly luxury watches, and deceived the victims into investing in her schemes, by undertaking to provide them with lucrative returns. The total amounts involved in the fraud charges and the money laundering charge were over HK\$81 million and about HK\$150 million respectively. In sentencing the defendant, Hon J Toh described that the scheme devised by the defendant was a very nefarious one and the total losses suffered by the victims were astronomical. The defendant was sentenced to imprisonment for 12 years.

In *HKSAR v Double Bright Limited* KTS 21847/2019, Double Bright Limited had sold the residential properties of a development by



質不利影響。於 2020 年 1 月 14 日，被告在認罪後被裁定罪名成立，罰款 50,000 港元。

在香港特別行政區訴黎煥賢及另一人（高院刑事案件 2018 年第 66 號）一案中，涉案公司（前稱中國金屬再生資源（控股）有限公司（中國金屬））的一名非執行董事（第一被告）和一名公司經理（第二被告）被控於 2009 年在中國金屬上市一事上串謀詐騙香港交易所。該公司首次公開招股的收益合共約 10 億港元。其後，證券及期貨事務監察委員會於 2015 年以公眾利益為由申請把該公司清盤，使該公司成為首家因此清盤的公司。在刑事訴訟方面，案中大部分證據牽涉分析從該公司的澳門附屬公司取得的資料，而控方也須通過法院請求書以取得居於澳門的控方證人的證供。有關法律程序由澳門檢察機關在澳門法院進行，控方亦特別小心確保所得證據符合香港及澳門兩地法院的程序和證據規則。最終，陪審團於 2019 年 12 月裁定兩名被告罪名成立。於 2020 年 1 月，第一及第二被告分別被判處監禁七年和八年。正如法官在判刑時指出，“本案所揭露的詐騙行為近乎同類案件最為嚴重的一宗”。其後，第一被告就其定罪提出上訴申請，案件仍在進行中。

分科第四 3 組 — 廉政公署（公營機構）

公職人員行為不當罪行具有重要作用，可確保公職人員的誠信得以保障維護。只有獲賦予並行使或履行權力、職責、責任或酌情權以謀求公眾利益的人，才會干犯這罪行，但這些人不一定受僱於政府。在香港特別行政區訴蕭志勇及其他人（西九龍裁判法院刑事案件 2018 年第 2550 號）一案中，一名由香港考試及評核局委

tender, and it was prosecuted for failing to set out the terms of payment, namely, the details of the “Early Settlement Cash Rebates”, clearly and precisely in the register of transactions, contrary to section 59(1)(g) and (6) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621). In particular, the defendant had set out “the title” of the said rebate only, and had omitted the “percentage/ amount” of such rebate in connection with the purchase of the relevant properties. The contravention involved had materially and adversely affected the transparency and fairness in the sales of first-hand residential properties and the interest of the relevant purchasers. On 14 January 2020, the defendant was convicted on its own plea, and was fined for a sum of HK\$50,000.

In *HKSAR v Lai Wun-yin & another* HCCC 66/2018, a non-executive director (“D1”) and a company manager (“D2”) of the company formerly known as China Metal Recycling (Holdings) Limited (“China Metal”) were prosecuted for conspiring to defraud the Hong Kong Stock Exchange in the listing of China Metal in 2009. A total of about HK\$1 billion was yielded from the company's initial public offering. In 2015, the company subsequently became the first one to be wound up on public interest grounds on the application of the Securities and Futures Commission. For the criminal proceedings, a major part of the evidence involved analyzing materials obtained from the company's Macao subsidiary, and Letter of Request proceedings had to be initiated to obtain testimonies from prosecution witnesses residing in Macao. As proceedings were conducted in Macao Courts by our Macanese prosecutorial counterparts, much care had to be taken to ensure that the evidence obtained conformed to the court procedures and rules of evidence applicable to Hong Kong and Macao respectively. Ultimately, the 2 defendants were convicted by jury in December 2019. In January 2020, D1 was sentenced to 7 years' imprisonment and D2 was sentenced to 8 years' imprisonment. As noted by the sentencing judge, “the fraud revealed in the present case comes very close to the worst of its type”. Since then, D1 has lodged an application to appeal against her conviction which is underway.

Section IV(3) – ICAC (Public Sector)

The offence of misconduct in public office plays an important role in ensuring that the integrity of the public service be protected and upheld. The offence can be committed only by persons who are invested with powers, duties, responsibilities or discretions which they are obliged to exercise or discharge for the benefit of the general public but such persons may or may not be employed by the Government. In *HKSAR v Siao Chi-yung Wesley & others* WKCC 2550/2018, which involved the leakage of examination questions and marking criteria of the Diploma of Secondary Education examinations by oral examiners appointed by the Hong Kong

任的口試主考員向一教育中心導師洩露香港中學文憑考試的考試題目及評分準則，法院在決定是否構成公職人員行為不當罪行時，所考慮的因素為口試主考員（非政府僱員）是否公職人員。經考慮口試主考員獲委以並為大眾利益而行使的權力、職責和責任後，法院裁定口試主考員為公職人員，並裁定申請人各自被控的串謀公職人員行為失當罪名成立。申請人就定罪提出的上訴在2021年5月被駁回。

在香港特別行政區 訴 徐聖智 (2020) 23 HKCFAR 290 一案中，終審法院審理的是公職人員行為不當的案件，涉及一名醫生濫用職權，為其不合資格的家人安排醫療服務。終審法院駁回該名醫生提出的上訴許可申請，並表明案中所涉的不當行為極為嚴重，申請人不能以其親屬可只支付些微費用甚或免費也在其他公共設施獲得有關服務作為免責辯護。

同年，終審法院在香港特別行政區 訴 鄭永健 (2020) 23 HKCFAR 83 一案中，就《選舉（舞弊及非法行為）條例》（第554章）第2部所訂的罪行確立重要原則。上訴人因為向與本土派政治組織有關連的人士提供金錢，作為他們在區議會選舉中參選或他們令第三者參選的誘因，被裁定在選舉中作出舞弊行為罪名成立（違反第554章

Examinations Authority to a tutor of an education centre, the Court considered whether oral examiners (who were not Government employees) were public officers for the purpose of the offence of misconduct in public office. Having considered the power, duty and responsibility entrusted to the oral examiners and exercisable for the public good, they were held to be public officers. The applicants were convicted of their respective charges of conspiracy to commit misconduct in public office. Their appeals against conviction were dismissed in May 2021.

In *HKSAR v Chui Sing-chi Grace* (2020) 23 HKCFAR 290, the Court of Final Appeal considered a case of misconduct in public office in which a medical officer had misused her position by arranging medical services for her ineligible family members. In dismissing her application for leave to appeal, the Court of Final Appeal made it clear that the misconduct involved was plainly serious; and it was no defence that the applicant's relatives could have obtained such services at other public facilities at little or no cost to themselves.

In the same year, the Court of Final Appeal, in the case of *HKSAR v Cheng Wing-kin* (2020) 23 HKCFAR 83, laid down important principles in relation to the offences under Part 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). The appellant was convicted of offences relating to corrupt conduct at an election contrary to sections 6 and 7(1) of Cap. 554 for offering money to persons associated with localist political organizations as an inducement for them either to stand themselves, or to get others to stand, as a candidate in the District Council Election. The sole issue on appeal



第 6 及 7(1) 條)。上訴所涉的唯一爭議點是第 554 章第 7(1) 條中“舞弊”一詞的意思。法院在駁回上訴時指出，該條文所指的舞弊行為應理解為會導致破壞“公平、公開和誠實的”選舉的任何行為；而第 554 章第 7 至 21 條應按立法目的詮釋為訂明進一步的罪行，而有關罪行受第 554 章第 3 條列明的法定目的（即推動公平、公開和誠實的選舉，以及禁止與選舉有關的舞弊及非法行為）所規限。法院裁定上訴人的行為明顯屬於第 554 章第 7(1) 條所指的行為：他意圖作出第 554 章第 7(1) 條所指明的舞弊行為，即其行為涉及誘使同案被告為個人利益而參選，以分薄目標參選人的得票，藉以操縱選舉結果，對目標參選人不利，破壞公平、公開和誠實的選舉。

分科四第 4 組 — 廉政公署（私營機構）

根據《防止賄賂條例》（第 201 章）第 9 條作出的檢控在打擊私營機構貪污方面發揮重要作用。在 2020 年，法院就《防止賄賂條例》第 9 條頒布以下重要裁決：

在香港特別行政區 訴 司徒健群（終院刑事雜項案件 2019 年第 60 號）一案中，終審法院上訴委員會釐清《防止賄賂條例》第 9 條下各類罪行的犯罪思想元素要求。凡代理人索取利益，即屬干犯索取利益罪行，對方是否準備提供代理人所索取的利益則無關重要。犯罪思想元素的要求着眼於其所圖的利益。換言之，適當的犯罪思想元素是指代理人意圖索取的利益屬違禁性質。另一方面，就代理人接收獲提供的利益而言，適當的犯罪思想元素要求則為其所知或所信。在此情況下，代理人明知或相信向其提供的利益屬違禁性質而仍然接受，即招致刑事法律責任。

於 2020 年 6 月 30 日，終審法院就違反《防止賄賂條例》第 9 條的代理人接受利益罪頒下重要判決（見香港特別行政區 訴 趙鶯 (2020) 23 HKCFAR 194 一案）。法院一致裁定控方上訴得直，並解釋應如何引用終審法院早前的兩個案例，即香港特別行政區 訴 陸健 (2016) 19 HKCFAR 619 案及律政司司長 訴 陳志雲 (2017) 20 HKCFAR 98 案的裁決。法院裁定，任何人同意或選擇在某情況下“代對方辦事”，而該情況令人產生合理期望並且令該人有責任摒除自身利益、誠實地為對方的

was the meaning of the word “corrupt” in section 7(1) of Cap. 554. In dismissing the appeal, the Court pointed out that corrupt conduct under that section should be understood as any activity having a tendency to subvert “fair, open and honest” elections; and sections 7 to 21 of Cap. 554 should be construed purposively as creating offences which advance and are confined by the statutory objectives set out in section 3 of Cap. 554 (i.e. promoting fair, open and honest elections, and prohibiting corrupt and illegal conduct in relation to elections). The Court concluded that the appellant’s conduct clearly fell within section 7(1) of Cap. 554: he intentionally engaged in specified acts under section 7(1) of Cap. 554 corruptly in that his conduct involved inducing his co-defendants to stand for election for personal gain in order to divert votes away from targeted candidates with a view to manipulating the election results against them in a way which tended to undermine a fair, open and honest election.

Section IV(4) – ICAC (Private Sector)

Charges laid under section 9 of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”) play an important role in combating corruption in the private sector. During the year 2020, the following significant decisions concerning section 9 of POBO were handed down:

In *HKSAR v Seto Kin-kwan Franco*, FAMC 60 of 2019, the Appeal Committee of the Court of Final Appeal clarified the *mens rea* requirements of the different variants of section 9 of POBO offences. For the solicitation offence, the criminality lies in the agent soliciting an advantage. It does not matter whether the other party is prepared to offer the advantage solicited or not. The requirement of *mens rea* focuses on what he intends the advantage to be. In other words, the appropriate *mens rea* is the agent’s intention that the advantage that he solicits has the prohibited character. On the other hand, knowledge or belief is the appropriate *mens rea* requirement when the agent is at the receiving end of an offer of an advantage. In such event, it is the acceptance by the agent of the advantage offered, knowing that the advantage offered to him has the prohibited character or believing that it has such a character, which attracts criminal liability.

On 30 June 2020, the Court of Final Appeal handed down an important judgment in respect of the offence of agent accepting an advantage, contrary to section 9 of POBO. See *HKSAR v Chu Ang* (2020) 23 HKCFAR 194. The Court unanimously allowed the Prosecution’s appeal and explained how 2 of its earlier decisions, namely *HKSAR v Luk Kin Peter Joseph* (2016) 19 HKCFAR 619 and *Secretary for Justice v Chan Chi-wan Stephen* (2017) 20 HKCFAR 98 should be applied. The Court held that a person is an “agent” for the purposes of section 9(1)(a) of POBO where he or she “acts

利益行事，該人就因“代他人辦事”而成為《防止賄賂條例》第 9(1)(a) 條所指的“代理人”。代理人與主事人之間無須有事先存在的法律關係，只要接受辦事的要求便已足夠，甚至代理人不曾收到要求但選擇代對方辦事，或許亦已足夠。已作出或不作出的相關作為，必須“針對主事人的事務或業務”破壞代理關係中的誠信，以致損害主事人的利益。主事人蒙受的經濟損失並非有關罪行的元素。《防止賄賂條例》第 19 條特別說明，不得依據收取佣金屬“慣常做法”這事實來免除法律責任。任何人只要誠實和真誠地行事，代人辦事時向對方披露而非隱瞞佣金安排，就可輕易免除《防止賄賂條例》的法律責任。

分科四第 5 組 — 海關

該組負責就有關反走私、保護版權及商標、保障政府收入、保障消費者權益、不良營商手法和打擊洗錢罪行的各類條例向香港海關提供法律指引。於 2020 年，該組共提供 859 項法律指引。以下為該組在年內處理的一些比較重要的案件：

在香港特別行政區 訴 *Huang Ping*（第一被告）及另二人（第二及第三被告）（屯門裁判法院刑事案件 2020 年第 103 號）一案中，香港海關與水警於 2020 年 1 月 16 日在屯門某公眾碼頭採取聯合行動，打擊海上走私活動。執法人員發現碼頭內有數人下車把一些載有貨物的紙箱運上內河商船，形迹可疑。該船接着離開碼頭，駛向香港西部水域邊界。其後，警務人員在船隻駛近水域邊界時截停該船，登船後在操舵室找到該船的船長（第一被告）、船員（第二被告）和輪機員（第三被告），又在船員艙暗格內搜出 65 箱貨物，包括一批食用燕窩、手提電話和電子產品，總值逾港幣 2,700 萬元。案件其後交由海關人員調查。第一至第三被告未能出示任何與該批貨物相關的艙單，最後共同被控企圖輸出未列艙單貨物罪。三名被告全部承認控罪，第一被告判處監禁 14 個月，第二及第三被告各判處監禁 10 個月。

在香港特別行政區 訴 *Chan Chi-kin*（第一被告）及另一人（第二被告）（屯門裁判法院刑事案件 2020 年第 532 號）一案中，香港海關於 2020 年 4 月 21 日在元朗一個內有可疑貨櫃的圍起的場地採取反私煙行動，檢獲共 10,030,000 支私煙，

for another”, having agreed or chosen so to act in circumstances giving rise to a reasonable expectation, and hence a duty, to act honestly and in the interest of that other person to the exclusion of his or her own interests. There is no need for any pre-existing legal relationship between the agent and the principal. Acceptance of a request to act may suffice and it may even be sufficient for the agent to choose to act for another without a request to do so. The relevant act done or not done must be “aimed at the principal’s affairs or business” which subverts the integrity of the agency relationship to the detriment of the principal’s interests. Economic loss suffered by the principal is not an element of the offence. One cannot escape liability by relying on the fact that the commissions received were “normal practice” as section 19 of POBO specifically makes this clear. A person acting honestly and in good faith can easily avoid POBO liability by disclosing the commission arrangement rather than keeping it secret from the person for whom he or she is acting.

Section IV(5) – Customs and Excise

This section is responsible for advising the Customs and Excise Department on a wide spectrum of ordinances covering offences relating to anti-smuggling, copyright and trademark protection, revenue protection, consumer rights protection, unfair trade practices and anti-money laundering. In the year 2020, a total of 859 pieces of advice were given. Examples of some of the more significant cases that were handled by the section in 2020 are as follows:

In *HKSAR v Huang Ping (D1) and 2 others (D2 & D3) TMCC 103/2020*, The Hong Kong Customs and Excise Department (“C&ED”) and the Marine Police mounted a joint operation to combat sea smuggling activities at a public pier in Tuen Mun on 16 January 2020. Officers spotted a few persons from a vehicle were suspiciously conveying some loaded carton boxes to a river trade vessel at the pier. The vessel then departed the pier, heading for the western water boundary of Hong Kong. Subsequently, Police officers intercepted the vessel when it navigated close to the water boundary. Upon boarding, a captain of the vessel (D1), a crew member (D2) and an engineer (D3) of the vessel were found in the steering room. As a result of a vessel search, 65 cartons of goods including a batch of edible bird’s nest, mobile phones and electronic goods, valued over HK\$27 million, were found inside a secret compartment in a crew cabin. The case was subsequently handed over to Customs officers for investigation. D1 to D3 failed to produce any manifest to cover the goods and were at the end jointly charged with attempting to export unmanifested cargo. All 3 defendants pleaded guilty as charged. D1 was sentenced to 14 months’ imprisonment whilst D2 and D3 were each sentenced to 10 months’ imprisonment.

總值港幣 2,800 萬元。第一被告當時在附近一輛輕型貨車上，而第二被告正在打開該場地的大閘，並以手勢示意第一被告倒車。第二被告看見海關人員後企圖逃走。海關人員截查後發現貨櫃左後門大開，貨櫃內紙箱上的標記與貨車上紙箱的標記相同。海關人員在貨車上搜獲 230 箱合共 2,300,000 支私煙，另在貨櫃內搜獲 773 箱合共 7,730,000 支私煙。第一及第二被告被控兩項處理《應課稅品條例》適用的貨物罪，二人承認控罪。第一被告就每項罪行判處監禁 15 個月，同期執行；第二被告就每項罪行判處監禁 16 個月，同期執行。

在香港特別行政區 訴 *Lau Kiu-chak*（第一被告）及另一人（第二被告）（西九龍裁判法院刑事案件 2020 年第 2959 號）一案中，分別任職旺角某健身中心推銷員和董事的第一被告和第二被告被控作出具威嚇性的營業行為。於 2019 年 9 月，一名女受害人在旺角城市中心內被一名推銷員截停並請求簽署一份表格，好讓她能完成當天的工作。受害人簽署表格後被帶到健身中心接受體能測試。另一推銷員在健身中心內向受害人介紹健身器材並讓她試用。當被問到會付多少款項參加健身計劃時，受害人起初表示沒有興趣參加，後來被追問就回答“或許 500 元”。受害人其後收到一份宣稱是免責聲明的文件，她閱畢後簽署。第一被告繼而把另一份文件（後來得悉是顧客協議／個人訓練協議）交給受害人。受害人按照第一被告的指示在“付款條款”和“聲明”的部分簽署，“計劃費用”和“購買日期”的部分則留空。第二被告其後接觸受害人，聲稱受害人早前簽署的申請已獲批准，而該健身計劃 100 節的費用為港幣 50,000 元。受害人感到震驚，要求立即取消計劃。第二被告再告訴受害人，根據公司訂立的程序規定，受害人如欲取消計劃，必須把其銀行帳戶結餘減至少於港幣 50,000 元。在第一被告和第二被告陪同下，受害人在附近的自動櫃員機分四次交易提取港幣共 19,000 元，使其帳戶結餘減至少於港幣 50,000 元。第二被告取去受害人該筆港幣 19,000 元的現金，聲稱可於稍後安排全額退款。不久之後，第二被告又要求受害人透過銀行轉帳支付餘下港幣 31,000 元，以清繳該健身計劃的全部費用並因而符合全額退款的資格。該筆港幣 31,000 元的款項轉帳到第一被告的銀行帳戶後，第二被告告訴受害人尚有更多規定。經多番理論後，受害人收到港幣 500 元現金回贈和港幣 21,000 元退款，但被要求抄

In *HKSAR v Chan Chi-kin (D1) and another (D2)* TMCC 532/2020, C&ED seized a total of 10,030,000 sticks of illicit cigarette, valued at HK\$28 million, during an anti-illicit cigarette operation mounted in a fenced area in Yuen Long with a suspicious container inside on 21 April 2020. D1 was aboard a light goods vehicle nearby whilst D2 was opening the main gate of the fenced area and giving hand signals to direct D1 to reverse the vehicle. D2 tried to flee when he spotted Customs officers' presence. Upon interception, officers found that the container's left rear door was widely opened and the markings of carton boxes inside the container were identical to those marked on the carton boxes found inside the vehicle. A total of 230 carton boxes containing 2,300,000 sticks of illicit cigarette were found on the vehicle whereas a total of 773 carton boxes containing 7,730,000 sticks of illicit cigarette were found in the container. D1 and D2 were charged with 2 counts of dealing with goods to which the Dutiable Commodities Ordinance applies. They pleaded guilty as charged. D1 was sentenced to 15 months' imprisonment for each count of offence, both to run concurrently whilst D2 to 16 months' imprisonment for each count of offence, both to run concurrently.

In *HKSAR v Lau Kiu-chak (D1) and another (D2)* WKCC 2959/2020, D1 and D2, respectively as the salesperson and director of a fitness centre in Mong Kok, were prosecuted for engaging in an aggressive commercial practice. In September 2019, a female victim was stopped by a salesperson inside Mongkok City Centre, begging her to sign a form so that she could finish work that day. After signing the form, the victim was brought to the fitness centre for a fitness test. Inside the fitness centre, another salesperson introduced the fitness equipment to the victim and let her try. The victim was asked how much she would pay for joining the fitness package. The victim initially expressed no interest to join but later replied "may be \$500" after being pressed. Later, a document purported to be a disclaimer was given to the victim who signed after reading. D1 then handed another document (later known as Customer Agreement / Personal Training Agreement) to the victim. Acting under D1's instruction, the victim signed the "payment terms" and "declaration" sections with the "package fee" and "date of purchase" left blank. Subsequently, D2 approached the victim to claim that the application form the victim signed earlier had been approved and such fitness plan costed HK\$50,000 for 100 sessions. The victim felt shocked and requested to cancel the package immediately. The victim was further prompted by D2 that it was a procedural requirement laid down by the company for her to reduce the balance of her bank account to less than HK\$50,000 if she wanted to cancel such package. Accompanied with D1 and D2, the victim withdrew a total sum of HK\$19,000 in 4 transactions via a nearby ATM to reduce her account balance below HK\$50,000. D2 took the cash of HK\$19,000 from the victim claiming that a full refund could be arranged later. Shortly afterwards, D2 further prompted the victim to settle the remaining HK\$31,000 by bank transfer so that the fitness package

寫一份現金回贈聲明和一份確認書，承認冷靜期不適用於其健身計劃，以及健身中心不曾以任何威嚇或恐嚇的方式銷售服務。第一被告和第二被告其後被捕，共同被控串謀作出具威嚇性營業行為。二人承認控罪，各被判處監禁三星期。法院又命令第一被告和第二被告各向受害人賠償港幣 14,250 元。

在香港特別行政區 訴 *Liu Yong-shan* (西九龍裁判法院刑事案件 2019 年第 2611 號) 一案中，一個從馬來西亞抵港的郵包被抽選進行清關程序。經檢驗後，發現郵包內有 10.3 公斤穿山甲鱗。郵包報稱載有“睫毛液”，收貨地址在元朗。被告在元朗郵政局收取郵包時被海關人員拘捕。漁農自然護理署確認，檢獲的穿山甲鱗是受《保護瀕危動植物物種條例》(第 586 章)規管的物種。調查發現，被告沒有為該等穿山甲鱗申請任何進口許可證。被告被控一項進口附錄 I 物種的標本罪，違反第 586 章第 5(1) 條，經審訊後被裁定罪名成立，判處監禁 20 星期。

在香港特別行政區 訴 普藝拍賣有限公司及其他人 (東區裁判法院傳票案件 2019 年第 42848 號及東區裁判法院刑事案件 2020 年第 74 號) 一案中，第一被告(普藝拍賣有限公司)是一家拍賣行；第二被告和第三被告是董事，而第四被告是古錢幣賣家。第四被告委託第一被告安排拍賣一枚“銀質幣 江南光緒 七錢二分”的古錢幣，當中顯示該枚錢幣已獲專業錢幣評級服務公司(評級公司)認可。於 2018 年 4 月 14 日，受害人以港幣 5,060 元(包括第一被告的佣金港幣 660 元)投得該枚錢幣。評級公司其後進行鑒定，確定從未認可該枚錢幣。第一被告至第四被告各被控一項供應已應用虛假商品說明的貨品罪。第四被告承認控罪，判處監禁三個月，緩刑 12 個月。第一被告至第三被告經審訊後被裁定罪名成立，分別罰款港幣 10,000 元和港幣 5,000 元。法院又下令第一被告和第四被告各向受害人賠償一半佣金。該枚錢幣被沒收。

could be treated as settled by full payment, thereby qualifying for a full refund. After the transfer of HK\$31,000 to D1's bank account, D2 told the victim that there were further requirements. After rounds of negotiation, the victim received cash rebate of HK\$500 and refund of HK\$21,000. However, the victim was asked to copy a cash rebate declaration and an acknowledgement admitting that the cooling-off period was not applicable to her fitness package and the fitness centre had not deployed any aggressive or threatening means for the sale of service. D1 and D2 were later arrested and jointly charged with conspiracy to engage in a commercial practice that is aggressive. Both pleaded guilty as charged and were each sentenced to 3 weeks' imprisonment. D1 and D2 each was also ordered to pay a compensation of HK\$14,250 to the victim.

In *HKSAR v Liu Yong-shan* WKCC 2611/2019, an inbound postal parcel originated in Malaysia was selected for Customs clearance. Upon examination, 10.3 kilograms of pangolin scales were found inside the postal parcel. It was declared to contain "Mascara" with a consignee address at Yuen Long. Customs officers arrested the defendant when she collected the parcel in Yuen Long Post Office. The Agriculture, Fisheries and Conservation Department confirmed that the seized pangolin scales were of the species controlled under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Investigation revealed that the defendant did not apply for any licence for importation of the pangolin scales. The defendant was charged with 1 count of importing specimens of Appendix I species otherwise than in accordance with the provisions of section 5(1) of Cap. 586. She was convicted after trial and sentenced to 20 weeks' imprisonment.

In *HKSAR v All Arts Auctioneers Limited and others*, (ESS 42848/2019 and ESCC 74/20), D1 ("All Arts Auctioneers Limited") was an auction house; D2, D3 were the directors whereas D4 was a seller in antique coins. D4 commissioned D1 to arrange auction of 1 antique coin "銀質幣 江南光緒 七錢二分" with an indication that it had been approved by PCGS (abbreviation of Professional Coin Grading Service). On 14 April 2018, the coin was successfully bid by the victim at a price of HK\$5,060 which included D1's commission fee of HK\$660. Subsequent authentication by PCGS confirmed that it never gave any approval in relation to the subject coin. D1 to D4 were each charged with 1 count of supplying goods to which a false trade descriptions was applied. D4 pleaded guilty to the charge and was sentenced to 3 months' imprisonment suspended for 12 months. D1 to D3 were subsequently convicted after trial and fined respectively HK\$10,000 and HK\$5,000. The court also ordered D1 and D4 each to make compensation of half of the commission to the victim. The subject coin was forfeited.

特別職務

Special Duties





2019年6月起，香港經歷前所未有的動盪，社會廣見不靖，公眾秩序受到擾亂。在這樣情況下，大量被告涉及嚴重罪行，例如暴動、非法集結、管有炸藥、縱火、有意圖而傷人及管有攻擊性武器等。

刑事檢控科在2020年4月中成立特別職務組，專責處理這類案件。該組成立之初，有八名檢控官和兩名高級檢控官，由兩名分別負責特別職務和公眾秩序活動及電腦網絡罪行的首長級人員領導。特別職務組由時任副刑事檢控專員楊美琪女士掌管。

特別職務組處理的案件，涉及的調查人數一般數以十計，部分大型事件的涉案疑犯更可多達數百人。這些案件的性質關乎人權和《基本法》，因而往往受到公眾關注。由於涉案的爭議點不一而足，辯方亦可能提出各樣抗辯理由，處理案件時尤須思慮周詳。特別職務組人員工作繁多，包括因應每名被捕人擷取相關案情及法律爭議點，而由於控罪須盡快向法院提出，故這項工作往往要在緊迫時間內完成。在許多情況下，有關方面需依賴各方面的媒體和警方拍攝的錄影片段，從不同視角呈現案發過程。在法庭上，當錄影片段的可接納性受到質疑時，控方須隨時協助法庭提供相關法律典據並傳召證人。這類案件在裁判法院和區域法院審結後，當中不少因控方或辯方上訴而交由上級法院審理。這些上訴案件同樣涉及大量準備工作，且不限於法律研究，律師的參與尤為必要。

Since June 2019, there has been unprecedented upheaval and widespread social unrest leading to public disorder in Hong Kong. In these cases, a large number of defendants are involved in serious offences such as riot, unlawful assembly, possession of explosives, arson, wounding with intent and possession of offensive weapons.

A Special Duties (SD) Team was set up in the Prosecutions Division in mid-April 2020 to tackle these cases. At its inception, the Team comprised of 8 Public Prosecutors and 2 Senior Public Prosecutors, led by 2 directorate grade officers respectively for Special Duties and Public Order Events and Cybercrime. The SD Team was headed by Ms Maggie Yang, then Deputy Director of Public Prosecutions.

For the SD Team, a typical case may involve the investigation of tens of individuals and for some larger scaled incidents, the number of suspects can go up to the hundreds. Often these cases attract public attention as their nature involves human rights and the Basic Law. Detailed consideration is required to cover the wide spectrum of issues and potential defence challenges. The tasks faced by members of the Team are therefore manifold, including distillation of both factual and legal issues relating to each arrested person, often in a pressing timeframe as charges must be laid in courts as promptly as possible. In many cases, video footages shot by open-source media outlets as well as those taken by the Police are relied upon to show the different perspectives of the event in question. In court, when the admissibility of the video footages is challenged, Prosecution must be ready to assist the Court by the provision of applicable legal authorities and calling the relevant witnesses. Upon the conclusion of these cases at the Magistrates' and District Courts, many of them were taken to the higher courts for appeals by either the Prosecution or the Defence. Again extensive preparatory works not limited to legal research are required in these cases and inputs from counsel are particularly necessary.

以下是特別職務組律師在期內處理的一些值得注意的案件：

- (i) 在香港特別行政區 訴 黎智英、李卓人、吳靄儀、梁國雄、何秀蘭、何俊仁及李柱銘 (區院刑事案件 2020 年第 536 號) 一案中，各被告被控於 2019 年 8 月 18 日在維多利亞公園組織和參與由民間人權陣線安排的未經批准集結，並被裁定罪名成立。他們被裁定組織公眾遊行罪名成立，而該公眾遊行是在違反《公安條例》(第 245 章) 第 13 條規定下進行的。
- (ii) 在香港特別行政區 訴 孔穎琛 (區院刑事案件 2021 年第 344 號) 一案中，被告是入境事務處的文書助理，承認公職人員行為失當罪，因此被裁定罪名成立。她多次在未經授權的情況下，進入入境事務處的電腦系統，取得當事人的個人資料，包括姓名、年齡及香港身份證號碼，然後把上述資料提供給 Telegram Messenger 應用程式上起底羣組的相關處理人員。通過上述起底渠道，取得約 215 名資料當事人 (包括高級政府官員、司法人員、警務人員、公眾人物及其家人) 的個人資料及在公眾領域傳播。法院判處被告監禁三年九個月。
- (iii) 在香港特別行政區 訴 鄭錦輝及另四人 (區院刑事案件 2020 年第 97 號) 一案中，各被告 (其中三人為大學生) 被控“管有物品意圖摧毀或損壞財產”罪。兩名被告在審訊前承認控罪，兩名被告經審訊後被裁定罪名成立，另一名被告則被裁定罪名不成立。警方搜查各被告位於灣仔一幢大廈的單位時，各被告從露台跳落低層露台。各被告遭低層單位的戶主要求離開，於是往下層逃去。他們其後被捕，經搜查後在各被告逃離的單位內檢獲總共 59 個汽油彈、79 個半製成汽油彈、50 個空樽、4 個裝有易燃液體的塑膠容器、5 支伸縮警棍、兩樽胡椒噴劑、一個槌子和四名被告的身份證。各被告被定罪後判監三年至三年四個月不等。
- (iv) 香港特別行政區 訴 湯偉雄及另二人 [2020] HKDC 588 案是 2019 年香港各項公眾秩序活動所涉暴動案件中最早審理之一。扼要而

The following are some notable cases handled by counsel of the SD Team in this period:

- (i) In *HKSAR v Lai Chee-ying, Lee Cheuk-yan, Ng Ngoi-yee Margaret, Leung Kwok-hung, Ho Sau-lan Cyd, Albert Ho Chun-yan and Lee Chu-ming Martin* DCCC 536/2020, the defendants were charged and convicted of organizing and taking part in unauthorized assemblies on 18 August 2019 arranged by the Civil Human Rights Front at Victoria Park. They were found guilty of organizing a public procession which took place in contravention of section 13 of the Public Order Ordinance (Cap. 245).
- (ii) In *HKSAR v Hung Wing-sum* DCCC 344/2021 – the defendant, who was a clerical assistant of the Immigration Department, pleaded guilty to misconduct in public office and was convicted accordingly. She had on numerous occasions accessed the Immigration Department’s computer system and obtained the personal information of the subjects including the full name, age and Hong Kong identification number without authorization. She would then provide the said information to the relevant handlers of the doxxing groups on the Telegram messenger app. Personal information of approximately 215 data subjects including senior government officials, judicial officers, police officers, public figures and their family members had been obtained and disseminated into the public domain through the said doxxing channels. The Court sentenced the defendant to 3 years and 9 months’ imprisonment.
- (iii) In *HKSAR v Cheng Kam-fai and 4 others* DCCC 97/2020 – the defendants (3 of whom were university students) were charged with “possessing things with intent to destroy or damage property”. Two defendants pleaded guilty before trial and 2 others were found guilty after trial with 1 found not guilty. When the Police raided the defendants’ unit in a building in Wanchai, the defendants jumped off the balcony and landed on the lower floor balcony. The defendants were asked by the owner of the lower floor unit to leave so they escaped downstairs. They were subsequently caught and upon search of the defendants’ abandoned unit, a total of 59 petrol bombs, 79 semi-finished petrol bombs, 50 empty bottles, 4 plastic barrels containing flammable liquid, 5 extendable batons, 2 bottles of pepper spray, a hammer and ID cards of 4 of the defendants were found. Upon conviction, the defendants were sentenced to imprisonment ranging from 3 years to 3 years and 4 months.
- (iv) The case of *HKSAR v Tong Wai-hung and 2 others* [2020] HKDC 588 is one of the first riot trials stemming from the public order events in Hong Kong in 2019. In gist, on 28 July 2019, a large number of people marched westwards from a public

言，大批人在 2019 年 7 月 28 日違反警方發出不反對通知書的條件，離開公眾集會的舉行地點遮打花園，西行前往中央人民政府駐香港聯絡辦公室。大批示威者在警察封鎖線前方近西邊街的德輔道西集結，在警方多次警告下仍然拒絕離去。當晚，警方採取行動驅散羣眾，而示威者則向警方投擲磚塊、石頭、鐵枝、雨傘和水樽等物件還擊。特別戰術小隊人員尾隨逃入奇靈里的示威者，最後在巷尾截獲並拘捕所有被告。

經審訊後，原審法官裁定所有被告暴動及非法集結罪名不成立，其中一個理由是《公安條例》(第 245 章)第 18 及 19 條已將共同犯罪計劃原則豁除於非法集結及暴動罪之外。

就上述無罪裁定，律政司司長根據《刑事訴訟程序條例》(第 221 章)第 81D 條提出兩個法律問題，以待上訴法庭裁決。該等向上訴法庭提出的問題聚焦於普通法共同犯罪計劃原則的要素。上訴法庭批准律政司司長的申請：[2021] 2 HKLRD 399，而湯偉雄(被告)則在 2021 年 6 月向終審法院提出申請，尋求證明所涉法律問題具有重大而廣泛的重要性。終審法院就上述律政司司長的申請及香港特別行政區訴盧建民 [2021] HKCFA 37 案進行合併聆訊，並在 2021 年 11 月 4 日作出裁定，進一步釐清共同犯罪計劃原則。

- (v) 在香港特別行政區訴劉家棟(高院裁判法院上訴 2020 年第 137 號)一案中，被告是一名社工，經審訊後被裁定“故意阻撓在正當執行職務的警務人員”罪名成立，違反《侵害人身罪條例》(第 212 章)第 36(b)條。案發在 2019 年 7 月 27 日元朗一場示威期間，當時發生多宗暴力事件。經過一輪衝突後，由於羣眾拒絕聽從警方警告，警方便採取行動驅散羣眾。被告是站在正在推進的警方防線前方的社工。

期後，被告就定罪及 12 個月監禁的刑罰提出上訴。法庭駁回就定罪的上訴，裁定上訴人的行為構成故意阻撓警方而沒有任何

meeting at Chater Garden towards the Liaison Office of the Central People's Government in breach of the conditions of the notice of no objection issued by the Police. A large crowd of protestors had assembled on Des Voeux Road West near Western Street before the Police cordon line. The protestors refused to leave despite repeated police warnings. That evening, the Police took action to disperse the crowd and the protestors retaliated by hurling objects including bricks, rocks, iron bars, umbrellas and bottles towards the Police. Special Tactical Contingent officers chased after the protestors who had fled into Ki Ling Lane. All defendants were eventually intercepted and arrested at the end of the alley.

After trial, all defendants were acquitted of riot or unlawful assembly. The trial judge held, *inter alia*, that sections 18 and 19 of the Public Order Ordinance (Cap. 245) had excluded the doctrine of joint enterprise from the offences of unlawful assembly and riot.

From the above acquittal, the Secretary for Justice raised 2 questions of law for the determination of the Court of Appeal (CA) pursuant to section 81D of the Criminal Procedure Ordinance (Cap. 221). The questions to the CA focused on the essence of the doctrine of joint enterprise in the common law. The Court of Appeal allowed the Secretary for Justice's application: [2021] 2 HKLRD 399 and in June 2021, Tong Wai-hung (the defendant) applied for certification of questions of law of great and general importance to the Court of Final Appeal. The ruling from the Court of Final Appeal was delivered on 4 November 2021 in *HKSAR v Lo Kin-man* [2021] HKCFA 37 which was heard together with the said Secretary for Justice's application and the doctrine of joint enterprise was further clarified.

- (v) In *HKSAR v Lau Ka-tung* HCMA 137/2020, the defendant, who was a social worker, was convicted after trial of "wilfully obstructing a police officer in the due execution of his duty" contrary to section 36(b) of the Offences against the Person Ordinance (Cap. 212). The offence took place during a demonstration in Yuen Long on 27 July 2019 where episodes of violence occurred. After a period of confrontation and when the crowd refused to heed police warning, the Police took steps to disperse the crowd. The defendant was a social worker who stood in front of the advancing police line.

The defendant appealed against both conviction and sentence of 12 months' imprisonment. The appeal against conviction was dismissed as the Court held that the defendant's conduct amounted to wilfully obstructing the Police while not having any lawful excuse to do so. The appeal against sentence was allowed, reducing it to 8 months' imprisonment. Upon appeal, the Court held that



合法辯解。就刑罰的上訴得直，減刑至八個月監禁。經上訴後，法庭裁定過往典據訂立的非法集結量刑因素，適用於非法集結或暴動期間“阻撓警務人員”的案件。被告其後申請向終審法院申請上訴許可的證明書，但申請被拒。

- (vi) 以覆核刑罰方式向上訴法庭提出的上訴案件在 2020 年有所增加。該等案件有時源於《裁判官條例》(第 227 章)第 104 條的不成功覆核。當律政司司長認為法庭施加的刑罰原則上錯誤或明顯不足，可引用《刑事訴訟程序條例》(第 221 章)第 81A 條覆核刑罰。律政司司長訴 S.H.Y (覆核申請 2020 年第 7 號)案正是一例。案中一羣示威者在行人路上張貼海報，在警察到場後逃跑。被告當時是中四學生，她和其他人被截停。警方搜查被告後，發現她有一個有酒精的玻璃瓶、一瓶消毒藥水、一罐打火機油和其他物品。她被控管有攻擊性武器，承認意圖以涉案物品製造汽油彈。裁判官判刑時認為所有判刑選項仍然存在，但只判處 12 個月感化令。律政司司長覆核刑罰後，上訴法庭改判 120 小時社會服務令。

the sentencing considerations of unlawful assembly as laid down in the previous authorities can be applied in cases of “obstructing a police officer” during an unlawful assembly or riot. Subsequently the defendant applied for a Certificate of Application to the Court of Final Appeal for Leave to Appeal and his application was refused.

- (vi) Appeals by way of sentence reviews to the Court of Appeal have increased in 2020. They sometimes originate from unsuccessful reviews under section 104 of the Magistrates Ordinance (Cap. 227). When the Secretary for Justice considers that the sentence imposed by the Court is wrong in principle or manifestly inadequate, a review of sentence can be invoked under section 81A of the Criminal Procedure Ordinance (Cap. 221). As an example, in *Secretary for Justice v S.H.Y* CAAR 7/2020, a group of protestors put up posters on pavement and they fled upon police arrival. The defendant was at the time a Form Four secondary school student and she was intercepted with others. Upon search, the defendant was found to have a glass bottle containing ethyl alcohol, a bottle of antiseptic solution, a can of lighter fluid amongst others. She was charged with possession of offensive weapon and admitted that she intended to make a petrol bomb with the articles in question. Upon sentencing, while the Magistrate considered that all sentencing options were open, only a 12-month probation order was given. Upon the Secretary for Justice’s review of sentence, the Court of Appeal replaced the sentence with 120 hours of community service.

- (vii) 在律政司司長訴李炳希及另一人(覆核申請 2020 年第 14 號)一案中,兩名警員在旺角尾隨觀察一些設置路障的示威者,示威者隨後攔截並圍堵其中一名警員。一名示威者對該警員一再拳打腳踢,其他人也一起加入,持棍毆打該警員,對其拳打腳踢,最終四人被控襲擊正在執行職務的警務人員罪。事發期間,其中一名凶徒以膝跪壓警員頸部並用雙手扭其頸部,而另一名被告則多次腳踢警員。各被告是本判刑覆核的當事人,曾目睹同案被告在該警員失去意識時對他拳打腳踢。各被告承認,在警員被羣毆時為同黨把風,以防警方逮捕。裁判官裁定每名被告均罪名成立,各判處監禁三個月。經判刑覆核後,上訴法庭將刑期增至 10 個月。
- (viii) 暴動及非法集結往往與縱火及刑事損壞的罪行同時發生。在 香港特別行政區訴曾偉龍(區院刑事案件 2020 年第 144 號)一案中,被告經審訊後被裁定“串謀縱火”罪名成立。2019 年 10 月 20 日中午左右,被告駕駛市區的士,在大埔一所大學附近被截停。經搜查後,警方在車尾箱的紙箱內發現 40 瓶汽油彈、超過一公升汽油和兩個點火器。被告作供表明是受一名熟客僱用運送醫療用品,否認知道箱內所載物品是什麼,並聲稱沒有嗅到汽油味。法院不接納被告的聲稱,因為這並不符合做生意之道。被告被裁定罪名成立,判處監禁四年。
- (ix) 許多公眾秩序案件源於政治分歧,往往演變為激烈爭執。在香港特別行政區訴張裕泰(第一被告)及其他人(區院刑事案件 2020 年第 183 號)一案中,第一被告承認一項非法禁錮罪和一項暴動罪,而第三被告則承認一項參與非法集結罪。案件於 2019 年 9 月 21 日晚上在元朗發生。第三被告在元朗一商場參與非法集結並損壞財產。午夜後不久,即 9 月 22 日凌晨,第一被告和很多人在車道上行走。第一被告攔住一名路人,指控他早前撕毀連儂牆上的便利貼,並強迫他下跪。此事後來愈演愈烈,變成暴動,第一被告也參與其中。第一被告認罪,被判監三年四個月。第三被告亦認罪,判刑時 17 歲,被判處勞教中心令。
- (vii) In *Secretary for Justice v Lee Ping-hei and another* CAAR 14/2020, 2 police officers followed and carried out observation on some protestors in Mongkok who were setting up road-blocks. The protestors then intercepted and surrounded one of the officers. One of the protestors punched and kicked the officer repeatedly, and the others joined him by kicking, punching and beating the officer with sticks. The case resulted in 4 persons being charged with assaulting a police officer in due execution of his duty. In particular, one of the assailants knelt on the officer's neck and twisted the latter's neck with his hands whilst another defendant kicked the officer multiple times. The defendants who were the subjects of the sentencing review had watched their co-defendants assault the officer with kicks and punches while the police officer lost consciousness. The defendants admitted that they acted as lookouts for their friends to prevent police apprehension at the time of the beating. The Magistrate imposed a 3 months' imprisonment on each of the defendants. Upon sentencing review, the Court of Appeal increased the term of imprisonment to 10 months.
- (viii) Cases of riots and unlawful assemblies often occur together with crimes of arson and criminal damage. In *HKSAR v Tsang Wai-lung* DCCC 144/2020, the defendant was convicted after trial of "conspiracy to commit arson". At around noon on 20 October 2019, the defendant was driving an urban taxi, and was stopped near a university in Tai Po. Upon search, 40 petrol bombs, over one litre of petrol and 2 fire igniters were found in the carton box in the trunk. The defendant gave evidence to the effect that he was only hired by a regular customer to deliver medical supplies. He denied knowledge of the things in the box and claimed not smelling the petrol fumes. The Court rejected the defendant's claims as it made no commercial sense. The defendant was convicted and sentenced to 4 years' imprisonment.
- (ix) Many public order cases arose from political differences, often developing into violent altercations. In *HKSAR v Cheung Yu-tai (D1) and others* DCCC 183/2020, D1 pleaded guilty to 1 count of false imprisonment and 1 count of riot while D3 pleaded guilty to 1 count of taking part in an unlawful assembly. The case took place at night on 21 September 2019 in Yuen Long. D3 took part in an unlawful assembly at a shopping mall in Yuen Long and damaged properties. Shortly after midnight, in the small hours of 22 September, D1 and a large number of persons were walking on a carriageway. D1 stopped a passer-by and accused him of previously having torn down post-it notes on the Lennon Wall, and forced him to kneel. The matter later escalated into a riot with D1 taking part. D1 pleaded guilty and was sentenced to 3 years and 4 months' imprisonment. D3, aged 17 at the time of sentence, also pleaded guilty and was sentenced to a detention centre order.

(x) 公眾秩序活動也會涉及無牌槍械的案件。在香港特別行政區訴趙梓烽（區院刑事案件 2020 年第 329 號）一案中，第一被告承認一項涉及共 12 支電槍的無牌經營槍械罪和一項涉及 21 支伸縮警棍的管有違禁武器罪。被告在 Facebook 上兜售包括電槍和伸縮警棍在內的武器。他向喬裝成買家的警員出售 20 支警棍和 10 支電槍，並向他們展示如何使用這些武器及其威力。他與便衣警員完成交易時被當場拘捕。警方搜查被告在一間遊戲機中心的儲物間時，發現更多武器。被告在警誡下承認全部控罪。專家檢驗有關電槍後表示，其威力是普通泰瑟槍的數倍，可使人昏暈或不能動彈。考慮到涉案武器的數量、威力和潛在危害、銷售方式和手段、社會動盪背景，以及若武器落入不法之徒手中可造成嚴重傷害的風險，法院判處監禁兩年八個月。

(xi) 除上述法庭案件外，大規模逮捕也令 2020 年的案件數量顯著增加。涉及大規模逮捕的案件包括 2019 年 7 月 1 日衝擊立法會事件、2019 年 9 月 29 日發生在政府總部及金鐘道的暴動（每個地點各有超過 40 人被檢控），以及 2019 年 11 月在理工大學外牽涉超過 200 人的暴動。這些案件將於 2022 年至 2023 年開審。

特別職務組來年將繼續與執法機關緊密合作，嚴格遵照《檢控守則》履行檢控職務。

(x) Cases involving unlicensed arms also feature in public order events. In *HKSAR v Chiu Tsz-fung* DCCC 329/2020, D1 pleaded guilty to 1 count of dealing in arms without a license involving a total of 12 stun guns and 1 count of possession of prohibited weapon involving 21 extendable batons. The defendant offered to sell weapons including stun guns and extendable batons on Facebook. He sold 20 batons and 10 stun guns to police officers disguised as buyers and showed them how to use the weapons while touting the power of his goods. He was caught red-handed when he turned up to complete the transaction with undercover police officers. Upon search of the defendant's storage unit at a games arcade, more weapons were found. Under caution, he made a full admission. Expert examination of the subject stun guns revealed that the guns were several times more powerful than a common taser, and could stun or disable a person. Having considered the quantity of the weapons involved, their power and potential damage, the mode and means of sale, the social unrest background and the risk of causing serious injury if the weapons reached the wrong hands, the Court imposed a sentence of 2 years and 8 months' imprisonment.

(xi) Apart from the above court cases, 2020 also saw a significant increase of cases resulting from mass arrests, such as the arrests resulting from the storming of the Legislative Council on 1 July 2019, the riot on 29 September 2019 at the Central Government Offices and Queensway (more than 40 persons from each location were charged) and the riot involving over 200 persons outside the Polytechnic University in November 2019. These cases are scheduled for trial between 2022 and 2023.

In the coming year, the Special Duties Team will continue to work closely with law enforcement agencies to discharge its prosecutorial duties in strict compliance with the Prosecution Code.

外展及培訓

Outreach and Training





持續法律進修課程

一如往年，本科在 2020 年舉辦了多個研討會和交流会，由來自與檢控相關界別富經驗的演講嘉賓主講，當中包括：

- “數碼法證及加密貨幣罪行” — 在 7 月 15 日舉辦，由警務處網絡安全及科技罪案調查科總督察林永雄先生及兩名高級督察陳鴻先生和陳俊燁先生主講
- “檢控野生生物罪行及殘酷對待動物罪行的新發展” — 在 8 月 20 日舉辦，由香港大學法律學院副教授 Amanda Whitfort 女士主講
- “法證視頻分析、影像模擬及比較” — 在 9 月 29 日舉辦，由政府化驗所高級化驗師譚卓寧博士及化驗師陶志恒博士主講
- “與易受傷害證人錄影會面的基本程序及提問技巧” — 在 10 月 12 日舉辦，由社會福利署高級社會工作主任張林淑儀女士及警務處警察臨床心理學家馮浩堅先生主講

“與公眾會面”計劃

我們在 2014 年首次開展“與公眾會面”計劃，目的是加深公眾（特別是年輕人）對刑事司法制度、他們在制度中的角色，以及法治的重要性的認識。

Continuing Legal Education

As in previous years, seminars and sharing sessions were conducted by experienced guest speakers from sectors related to prosecution in 2020. Such seminars and sharing sessions included:

- Digital forensics and cryptocurrency crimes, by Mr Neo Lam, Chief Inspector and two Senior Inspectors, Mr Huma Chan and Mr Philip Chan, of the Cyber Security and Technology Crime Bureau of the Police on 15 July
- New developments in wildlife crime and animal cruelty prosecutions, by Ms Amanda Whitfort, Associate Professor, Faculty of Law of the University of Hong Kong on 20 August
- Forensic video analysis, image simulation & comparison, by Dr Jimmy Tam, Senior Chemist and Dr Tao Chi-hang, Chemist of the Government Laboratory on 29 September
- Protocol and questioning skills for video-recorded interview with vulnerable witnesses, by Mrs Chang Lam Sook-yee, Senior Social Work Officer of the Social Welfare Department and Mr Michael Fung, Clinical Psychologist of the Police on 12 October

“Meet the Community” Programme

The “Meet the Community” Programme was first introduced in 2014 to enhance the understanding of the general public, in particular, young people, of the criminal justice system and their role in the system as well as the importance of the Rule of Law.

在這項計劃下，本科的檢控人員到訪學校，就不同議題舉行講座，內容圍繞檢控人員如何執行職務的具體情況，包括檢控人員的角色、作出檢控決定的依據等一般事宜，以及檢控人員怎樣處理某特定種類的罪行。鑑於 2019 冠狀病毒病疫情在 2020 年相當嚴峻，我們為學校舉辦了網上講座，廣受歡迎。截至 2020 年年底，這項計劃共舉辦了 175 場講座。

見習計劃

這項計劃在 2012 年開展。在計劃下，獲委聘負責檢控複雜及敏感案件的外判資深大律師或資歷較深的大律師，可提名一名經驗不足 10 年的私人執業大律師參與見習計劃，以每日定額酬金，在檢控工作中擔任副手。這項計劃在 2020 年進一步擴展至涵蓋經驗達五年的初級大律師及初級事務律師。這項計劃為私人執業而資歷較淺的初級大律師提供寶貴的學習機會，讓他們有機會汲取檢控較為複雜和敏感案件的經驗和技巧。在 2020 年，共有 22 名私人執業的初級大律師參與這項計劃。

刑事訟辯課程

我們在 2020 年為新入職的檢控官和見習律政人員舉辦了兩班刑事訟辯課程。該課程為期 12 星期，包括由資深同事主講的課堂講座，內容涵蓋刑事法律、常規及程序等多項議題。學員會參觀警務處和政府化驗所，然後進行密集式的模擬法庭實習訓練。課程結束前，學員會被派駐到裁判法院實習一段時間，其間執行刑事案件檢控工作。

其他科別的律師如有意提高本身的刑事法知識，也可參與該課程。

今年我們推出了關於刑事事宜法律合作的新單元，由國際法律科律師主講，旨在讓檢控人員加深認識司法互助可如何便利跨境罪行的調查和檢控工作。

Under the Programme, prosecutors of the Division give talks to schools on diverse topics about how prosecutors carry out their duties, including general issues like their role, how they come to their prosecutorial decisions, as well as how they tackle specific types of offences. Amid the severe COVID-19 pandemic situation in 2020, virtual talks were delivered to schools and were well-received. By the end of 2020, a total of 175 talks under the Programme had been conducted.

Understudy Programme

This Programme was introduced in 2012. Under this Programme, senior counsel or senior junior counsel briefed to prosecute complex and sensitive cases can nominate a counsel in private practice with less than 10 years' experience to act as an understudy and to take part in the prosecution work as his or her junior at a fixed daily rate. In 2020, the Programme has been further extended to cover both junior counsel and junior solicitors with up to 5 years' experience. This has provided valuable learning opportunities to junior counsel for gaining experience and skills in prosecuting cases of complexity and sensitivity. A total of 22 junior counsel in private practice participated in the Programme in 2020.

Criminal Advocacy Course

In 2020, 2 rounds of Criminal Advocacy Course were held for our newly recruited Public Prosecutors and Legal Trainees. The 12-week course consisted of lectures given by our experienced colleagues, covering a wide range of topics on criminal law, practice and procedures. Participants visited the Police and the Government Laboratory as part of their learning experience. Intensive mock court exercises then followed, with the course concluding with a period of attachment to the Magistrates' Courts where participants prosecuting criminal cases in court.

The course was also open to counsel from other divisions wishing to enhance their knowledge on criminal law.



部門檢控人員培訓課程



刑事檢控科於 2020 年 1 月舉辦為期 14 天的部門檢控人員培訓課程，共有 45 名來自政府各決策局／部門或自主機構的非法律專業檢控人員參加。該課程旨在向部門檢控人員傳授履行職務所需的知識和技巧。

課程分為三部分：學員首先須出席一系列課堂講座，內容涵蓋裁判法院程序、訊問證人、前後一致／不一致的陳述、案中案程序及處置證物等議題。然後，他們到其中一所裁判法院參觀一天，體驗課堂上討論過的法律原則如何應用在實際案件中。課程最後一部分是為期六天的模擬法庭實習訓練，其間學員分別擔當檢控人員、辯方律師或證人的角色。

法庭檢控主任培訓

在 2019 年加入刑事檢控科的法庭檢控主任，獲派駐裁判法院工作前，在 2019 至 2020 年接受了專為他們而設的九個月培訓課程。新聘人員身負重任，負責維持裁判法院的高水平檢控工作。

培訓課程為期九個月，包括 (1) 一系列課堂講座，內容集中講解刑法和程序法的一些重要議題；(2) 模擬法庭實習訓練；以及 (3) 派駐裁判法院實習，其間新聘人員會先在督導下執行案件檢控工作，然後才自行處理有關工作。他們也到訪廉政公署和政府化驗所，並與有關人員會面，以加深認識這些部門的日常運作和加強合作。

本司委聘一名擁有豐富檢控知識及專業才能的顧問律師（前任高級助理刑事檢控專員）制訂和監督整個培訓課程。

A new module on legal cooperation in criminal matters was introduced this year. Delivered by counsel from the International Law Division, this module aims to provide prosecutors a better understanding of how mutual legal assistance may facilitate the investigation and prosecution of cross-border crimes.

Departmental Prosecutors Training Course

The Prosecutions Division organized a 14-day Departmental Prosecutors Training Course in January 2020. Attended by 45 lay prosecutors from different government bureaux / departments or autonomous bodies, the course aimed to equip departmental prosecutors the knowledge and skills necessary for their discharge of duties.

Divided into 3 parts, participants first had to attend a series of lectures covering topics such as Magistrates' Courts procedures, examination of witnesses, previous consistent / inconsistent statement, *voir dire* and disposal of exhibits. They then paid a one-day visit to one of the Magistrates' Courts, seeing how the legal principles discussed applied in real cases. The course concluded by their taking part in mock court exercises for 6 days, taking on the role of a prosecutor, defence counsel or a witness.

Court Prosecutors Training

Before being deployed to work at the Magistrates' Courts, Court Prosecutors who had joined the Prosecutions Division in 2019 underwent a tailor-made 9-month training programme between 2019 and 2020. The new recruits are expected to play a pivotal role in maintaining the high standard of the prosecution work in the Magistrates' Courts.

The 9-month training programme consisted of (1) a series of lectures focusing on important topics of substantive and procedural law, (2) mock court exercises, and (3) attachment to the Magistrates' Courts during which the new recruits prosecuted criminal cases firstly under supervision and then on their own. The new recruits also paid visits to the Independent Commission Against Corruption and the Government Laboratory to meet with their personnel to gain a better understanding of their daily operations and to enhance cooperation.

A Consultant Counsel, an ex-Senior Assistant Director of Public Prosecutions with extensive knowledge and expertise in prosecution work, was engaged to design and oversee the entire training programme.

統計數字 Statistics



服務表現的標準及目標

在 2020 年，刑事檢控科除處理出庭檢控的工作外，也向政府決策局及執法機關提供了共 13,895 份涉及刑事事宜的法律指引。在所有尋求法律指引的案件中，82.3% 符合本科的服務承諾，即在 14 個工作天內作出回覆，而 2019 年則是 91.2%。

工作量

審訊籌備及提供法律指引的工作

本科在 2020 年提供法律指引的次數較 2019 年增加 13.7%。本科檢控人員會確保提出和進行檢控方面的處理手法貫徹一致，以及在向執法機關提供法律指引時充分斟酌最新法律發展。

提供法律指引次數

Number of legal advice given

2019

12,225

2020

13,895

籌備由原訟法庭審理的案件數目

Number of cases prepared for the Court of First Instance

2019

424

2020

366

籌備由區域法院審理的案件數目

Number of cases prepared for the District Court

2019

966

2020

1,098

本科檢控人員及外判律師代替本科檢控人員在各級法院出庭檢控的工作

去年處理的案件總數和出庭日數均下跌。與 2019 年相比，由本科檢控人員處理的案件數目下跌 16.2%，由外判律師處理的案件數目則上升 13.7%。本科檢控人員及外判律師的出庭日數分別下跌 10% 及 4.6%。

Performance Standards and Targets

In 2020, in addition to court work, the Division gave a total of 13,895 legal advice on criminal matters to government bureaux and law enforcement agencies. Of all the requests for legal advice, 82.3% were replied to within 14 working days in accordance with our performance target, as compared to 91.2% in 2019.

Caseload

Trial preparation and advisory work

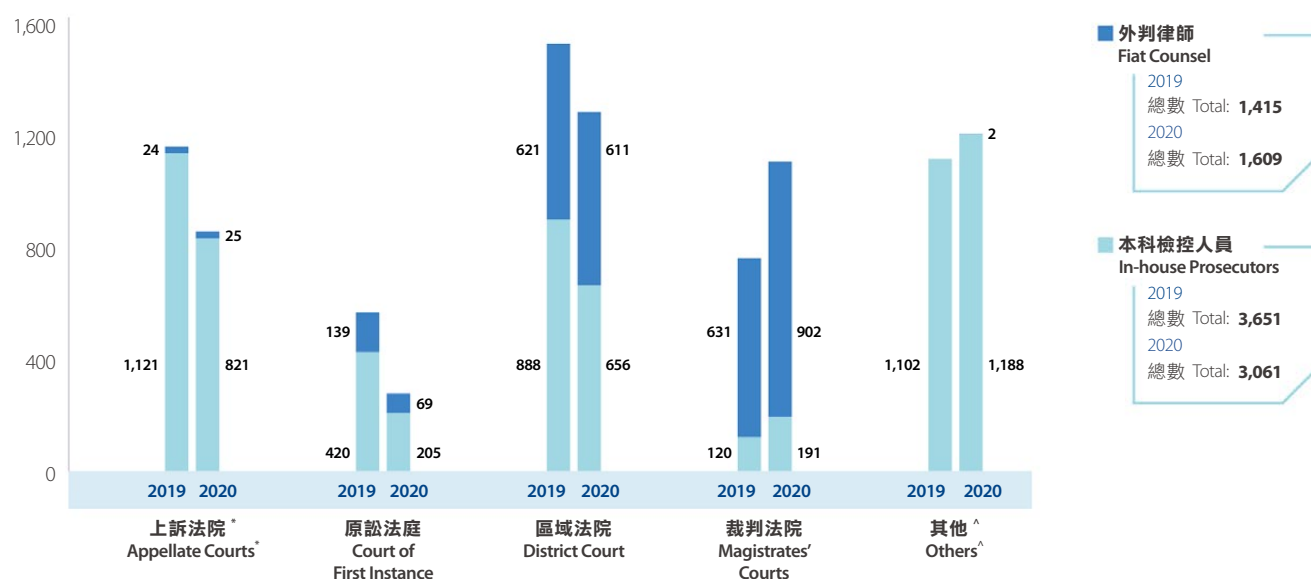
The number of legal advice given in 2020 increased by 13.7% as compared to 2019. Prosecutors will ensure that there is consistency in our approach in initiating and conducting prosecutions, and that recent developments in law are adequately addressed in their advice to law enforcement agencies.

Court work undertaken by In-house Prosecutors and Fiat Counsel in place of In-house Prosecutors in all levels of courts

There was a decrease in both the total number of cases conducted for the year and the number of court days. As compared to 2019, the number of cases conducted by in-house prosecutors decreased by 16.2% while the number of cases conducted by fiat counsel increased by 13.7%. The number of court days undertaken by in-house prosecutors and fiat counsel decreased by 10% and 4.6% respectively.

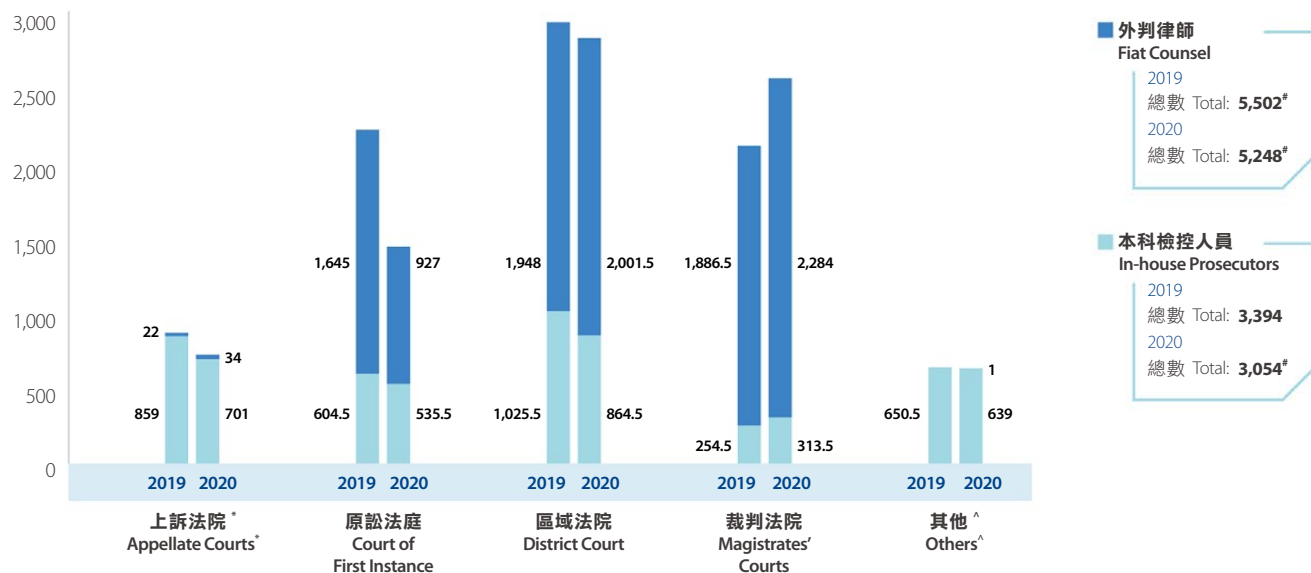
本科檢控人員及外判律師處理的案件數目

Number of cases conducted by In-house Prosecutors and Fiat Counsel



本科檢控人員及外判律師的出庭日數

Number of court days undertaken by In-house Prosecutors and Fiat Counsel



* 包括裁判法院上訴案件，以及在上訴法庭和終審法院聆訊的上訴案件。
This includes magistracy appeals and appeals heard in the Court of Appeal and the Court of Final Appeal.

[^] 包括限制令申請、死因研訊、保釋申請、訟費評定及高等法院的雜項程序。
This includes restraint applications, death inquests, bail applications, taxation of costs and High Court miscellaneous proceedings.

[#] 以四捨五入方式計算至最接近的整數。
The number is rounded up to the nearest whole number.

法庭檢控主任及外判律師代替法庭檢控主任 在裁判法院出庭檢控的工作

Court work undertaken by Court Prosecutors and Fiat Counsel in place of Court Prosecutors in the Magistrates' Courts

案件數目

Number of Cases

2019

132,097

2020

110,391

出庭日數

Number of Court Days

法庭檢控主任的出庭日數

Number of court days undertaken by
Court Prosecutors

2019

8,313[#]

2020

7,299

外判律師代替法庭檢控主任
出庭的日數

Number of court days undertaken by
Fiat Counsel in place of Court Prosecutors

2019

4,054

2020

2,213[#]

以四捨五入方式計算至最近的整數。
The number is rounded up to the nearest whole number.

案件的結果

定罪率

刑事檢控科用以計算定罪率的統計數字，是以被告人數為基礎*。

Case Outcomes

Conviction rates

The statistics used by the Prosecutions Division to calculate the conviction rates are defendant-based*.

	認罪後被定罪的 被告人數 No. of defendants convicted on own plea (A)	經審訊後被定罪的 被告人數 No. of defendants convicted after trial (B)	經審訊後裁定 無罪的被告人數 [^] No. of defendants acquitted after trial [^] (C)	經審訊後的 定罪率 Conviction rate after trial (B)÷[(B)+(C)]	包括認罪案件的 定罪率 Conviction rate including guilty plea [(A)+(B)]÷[(A)+(B)+(C)]
裁判法院 Magistrates' Courts					
2019	1,471	1,867	1,550	54.6%	68.3%
2020	841	1,214	1,101	52.4%	65.1%
區域法院 District Court					
2019	1,032	194	94	67.4%	92.9%
2020	674	134	56	70.5%	93.5%
原訟法庭 Court of First Instance					
2019	357	74	48	60.7%	90.0%
2020	187	36	28	56.3%	88.8%

* 舉例而言，一名被告如被控以四項罪名，最終被裁定一項罪名成立而其他三項罪名不成立，由於定罪率是以被告人數為基礎，這會視為一宗被定罪的案件。
For example, if a defendant faces four charges and if he has been convicted of one charge but not the other three charges, because the conviction rates are defendant-based, this will be regarded as a conviction case.

[^] 此欄包括“不提證據起訴”及“簽保”案件的數目。
The numbers in this column include “offering no evidence” and “bound-over” cases.

終審法院及相關申請

Court of Final Appeal and related applications

	由被告提出 By Defendants		由刑事檢控科提出 By Prosecutions	
	2019	2020	2019	2020
終審法院上訴證明書： Certificate to appeal to the Court of Final Appeal:				
得直 Allowed	3	1	1	0
駁回 Dismissed	53	27	1	0
撤銷 Withdrawn	1	2	0	0
待決 ^註 Pending ^{Note}	6	6	0	0
總數 Total	63	36	2	0
向終審法院提出的上訴許可申請： Application for leave to appeal to the Court of Final Appeal:				
得直 Allowed	7	2	1	0
駁回 Dismissed	32	54	1	1
撤銷 Withdrawn	0	2	0	0
待決 ^註 Pending ^{Note}	43	40	1	0
總數 Total	82	98	3	1
向終審法院提出的上訴： Appeal to the Court of Final Appeal:				
得直 Allowed	7	1	0	1
駁回 Dismissed	7	4	1	0
撤銷 Withdrawn	0	0	0	0
待決 ^註 Pending ^{Note}	4	1	1	0
總數 Total	18	6	2	1

註 – 指於該年提出但尚未完成處理的申請數目。

Note – This refers to the number of applications initiated and had not yet been concluded in the respective year.

上訴法庭

被告提出的上訴 By Defendants

2019 總數 Total: 420 2020 總數 Total: 319

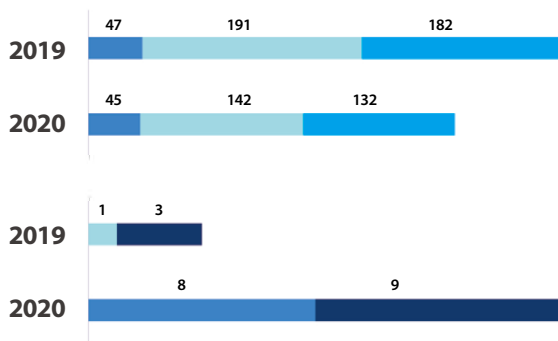
刑事檢控科提出的覆核刑罰申請 By Prosecutions Division to review sentences

2019 總數 Total: 4 2020 總數 Total: 17

刑事檢控科以案件呈述方式提出的上訴 By Prosecutions Division by way of case stated

2019 總數 Total: 0 2020 總數 Total: 0

Court of Appeal



原訟法庭

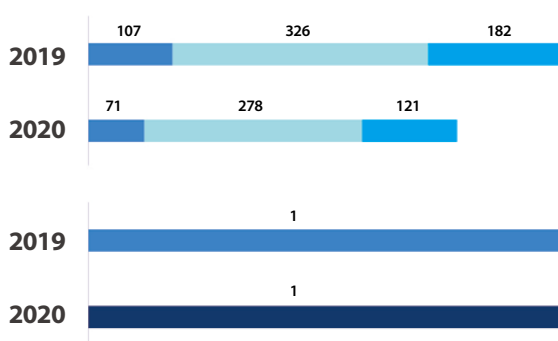
被告提出的上訴 By Defendants

2019 總數 Total: 615 2020 總數 Total: 470

刑事檢控科以案件呈述方式提出的上訴 By Prosecutions Division by way of case stated

2019 總數 Total: 1 2020 總數 Total: 1

Court of First Instance



■ 得直 Allowed ■ 駁回 Dismissed ■ 撤銷 Withdrawn ■ 待決^註 Pending^{Note}

註 – 指於該年提出但尚未完成處理的申請數目。

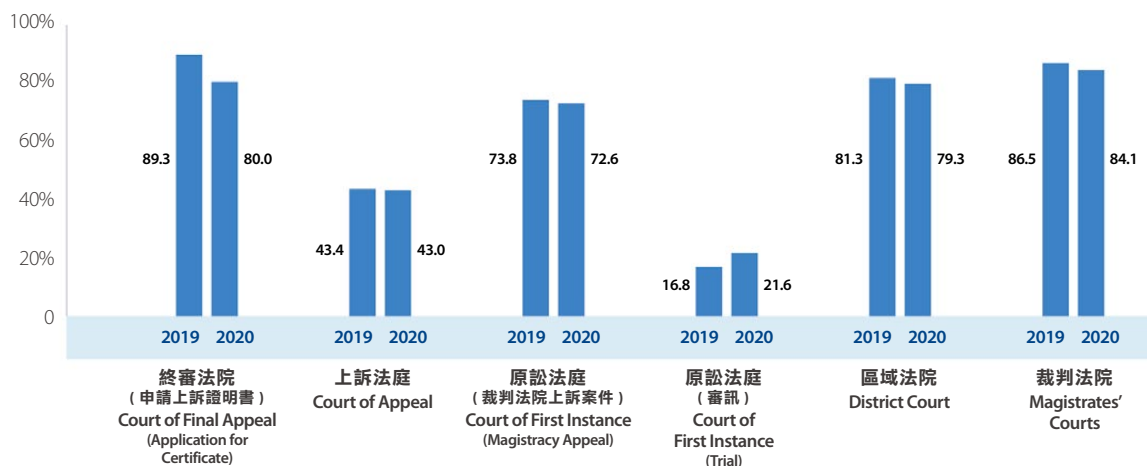
Note – This refers to the number of applications initiated and had not yet been concluded in the respective year.

在法庭雙語並用的狀況

(以中文審理的刑事案件百分率)

Bilingualism in courts

(Percentage of criminal cases conducted in Chinese)



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Acknowledgements

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