

# 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 assaulters 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。
- (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.

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。

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.