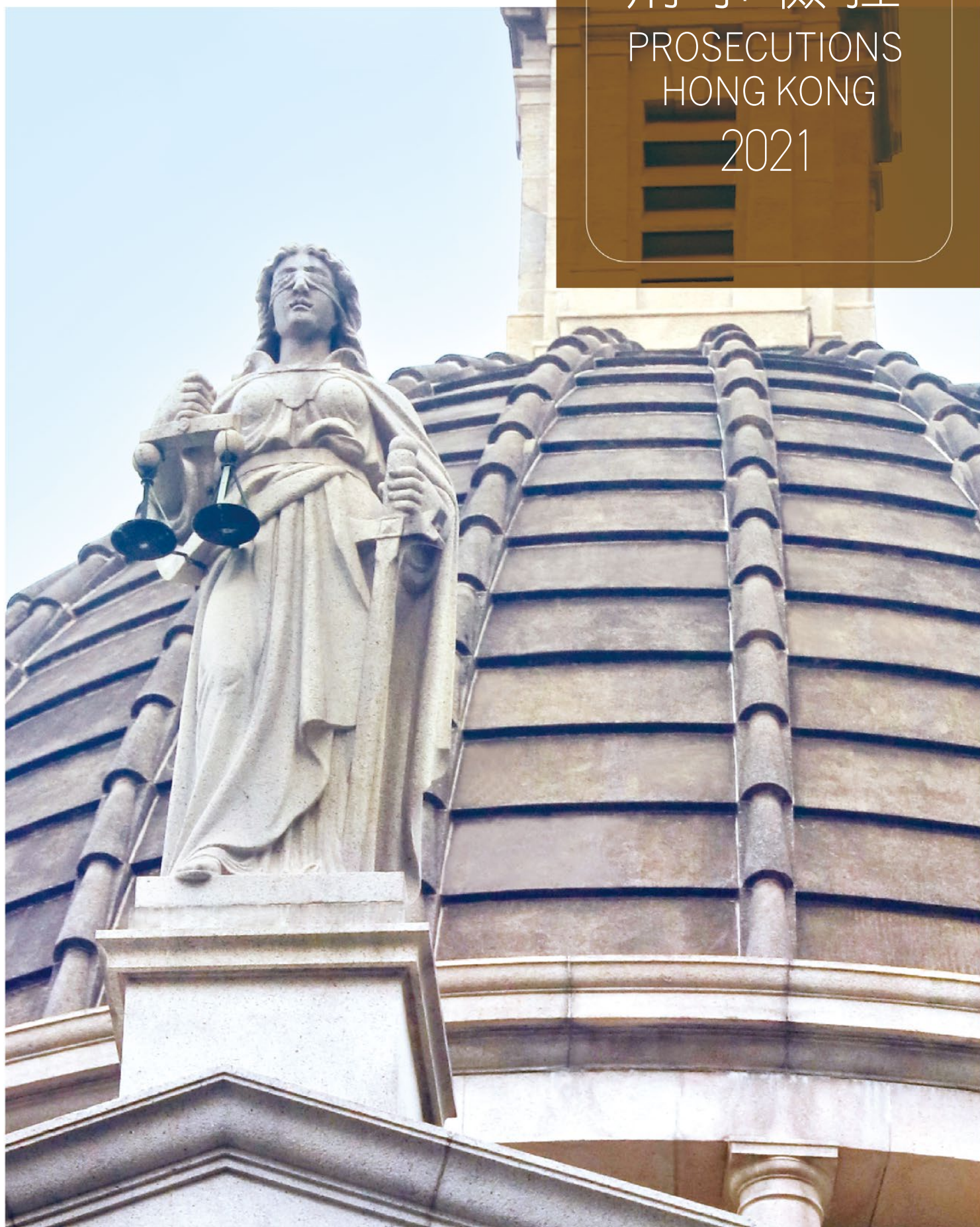




律政司
香港特別行政區政府
Department of Justice
The Government of the Hong Kong
Special Administrative Region

香港 刑事檢控 PROSECUTIONS HONG KONG 2021



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**PROSECUTIONS
HONG KONG
香港刑事檢控**

律政司司長, SBS, SC, JP

林定國資深大律師

林司長：

謹呈上刑事檢控科 2021 年的工作回顧。

2021 年仍然是充滿挑戰和機遇的一年。本科繼續處理不少具爭議性的案件，而某些案件的檢控決定和結果也受到公眾監察。眾所周知，新冠疫情持續擾亂了工作秩序。

然而，本科迎難而上，以專業幹練、竭誠勤勉的態度面對重重挑戰，令我深感自豪。我們的檢控人員繼續不遺餘力地捍衛法治，按公眾利益執行繁重而光榮的職務。我們繼續秉持《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，要鞏固市民對我們秉行刑事司法公義的信心，必須讓他們清楚了解我們的工作。本科會繼續為市民提供公開、公平及公正的檢控服務。

刑事檢控專員一職肩負重大的公共責任。我得以履行如此重任，實有賴司長和本科所有同事支持。各位一直鼎力支持本科彰顯法治，謹此向你們致以謝忱。



刑事檢控專員

楊美琪

2022 年 12 月 29 日

The Honourable Mr Paul T K Lam, SBS, SC, JP
Secretary for Justice

29 December 2022

Dear Secretary for Justice,

I am pleased to submit to you the Yearly Review of the Prosecutions Division for 2021.

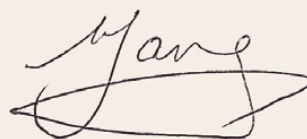
2021 was another year of challenges and opportunities. The Division continued to handle cases of a controversial nature. Our prosecutorial decisions and outcomes of certain cases were subject to public scrutiny. Moreover, the COVID-19 pandemic continued to disrupt the work setting as we knew it.

Yet, I am proud to say that our Division faced these challenges with determination, diligence, and professionalism. Our prosecutors have continued to demonstrate an unwavering commitment to the rule of law, discharging the onerous but honorable duty to act in the public interest. We continue to uphold the principle of prosecutorial independence as enshrined in Article 63 of the Basic Law, to control criminal prosecutions free from any interference.

We recognize that nourishing public confidence for our pursuit of criminal justice is only possible if the community has a clear understanding of our work. Our Division will continue to provide the community with a prosecution service that is open, fair, and impartial.

The position of Director of Public Prosecutions comes with great public responsibility, which I could not have fulfilled without the support I have received from you and my colleagues. May I take this opportunity to express my gratitude to you and them for their staunch 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 large, stylized loop at the end.

(Maggie Yang)
Director of Public Prosecutions





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PROSECUTIONS DIVISION

刑事檢控專員的序言 Director's Overview

本科每年在工作上都會遇到種種新挑戰，2021 年也不例外。然而，常言道：“有危便有機”。年內，本科人員繼續盡心竭誠，秉持專業幹練的精神服務社會，確保時刻公平公正、不偏不倚地推展與本港刑事司法制度有關的重任。

Every year brings about new challenges to the work of the Division, and 2021 has been no exception. Yet, as the saying goes, challenge brings opportunity. Throughout the year of 2021, officers of the Division have continued to serve the community with skill, dedication, and professionalism, ensuring that the imperatives of our criminal justice system were furthered in a just and even-handed manner at all times.

本年度的工作回顧以“篤行法治 普惠全民”為主題，彰顯檢控人員肩負為社會及代社會行事的首要任務。檢控人員執行極其重要的公務，並且在執行各項檢控工作時必須以整體公眾利益為依歸。檢控人員需肩負社會責任，秉持公正。由決定是否提出檢控、進行檢控以至處理刑事上訴案件，檢控人員都必須以公正獨立的方式行事，並以公眾利益為首要考量。這種責任源於我們深知，確保檢控工作妥為執行、把罪有應得之人治罪，以及還無辜者清白，是與公眾切身利益攸關。最終，我們檢控人員矢志服務社會，普惠全民。

那麼，檢控人員按整體公眾利益行事的職責如何付諸實行？作出檢控決定的過程便是例子之一。過程當中必須考慮兩項獨立但又互相關連的因素：第一，案件必須具有充分及可接納的證據，顯示有合理機會達致定罪；第二，即使證據充分，控方僅會在符合公眾利益的情況下提出檢控。每宗案件有其獨特性，我們理當慎重考慮所有相關因素，決定公眾利益何在。這種按公眾利益行事的精神貫穿著檢控人員的日常工作。

檢控獨立是我們職責上以公眾為本的另一體現。檢控人員以香港特別行政區（即整體社會）的名義行事，以盡力維護《基本法》第六十三條確立的獨立檢控權為宗旨。該條清楚訂明“香港特別行政區律政司主管刑事檢察工作，不受任何干涉。這亦表示檢控決定是基於並且單單基於證據作出，當中完全不涉及個人意見或政治立場等因素。檢控人員往往得到調查人員和執法機關的協助，但我們只為公義服務。檢控人員在法庭上代表社會，而檢控獨立的原則正是讓我們無懼無畏地追求公義的後盾。

秉持公正和按公眾利益行事的責任涵蓋檢控人員在法庭內的工作。我們在庭上的主要關注是要確保法律程序公平。這裏所指的“公平”包

The theme of this year's review, "Rule of Law for the Good of All", reflects a public prosecutor's overriding duty to act for and on behalf of the community. Prosecutors perform a crucial public duty, and the conduct of all prosecutorial work is guided by what is in the general public interest. Our primary obligation is one of ensuring fairness to the community. From making decisions on whether to prosecute, conducting prosecutions, to handling criminal matters at the appellate level, our prosecutors must act fairly, independently, and place the public good at the forefront of consideration. Such a duty is rooted in our recognition that the public has a legitimate interest in seeing that prosecutions are properly conducted, that the guilty are convicted and the innocent are acquitted. At the end of the day, it is the community and the "good of all" to which we prosecutors are committed to serving.

How then, is a prosecutor's duty to act in the general public interest reflected in practice? One of many examples is the process of making a prosecutorial decision, which requires consideration of two separate but interrelated matters. Firstly, there must be sufficient and admissible evidence demonstrating a reasonable prospect of conviction. Secondly, even where the evidence is sufficient, the prosecution will only proceed where the public interest so requires. Each case is unique and deserves our careful consideration of all relevant factors to determine where the public interest lies. This commitment to do what the public interest requires forms part of the fabric of prosecutors' day-to-day work.

Another manifestation of our public-centered duty is the concept of prosecutorial independence. Prosecutors act in the name of the Hong Kong Special Administrative Region – the community as a whole. In doing so, every effort is made to safeguard prosecutorial independence as enshrined in Article 63 of the Basic Law, which clearly stipulates that "*The Department of Justice of the HKSAR shall control criminal prosecutions free from any interference*". This also means that prosecutorial decisions are made on evidence, and on evidence alone. Factors such as personal opinion or political stance have absolutely no part to play in the process. While prosecutors are often assisted by investigators and law enforcement agencies, we serve justice and justice alone. It is the community that a prosecutor represents, and it is the principle of prosecutorial independence which allows us to fearlessly pursue public justice.

括向辯方披露所有相關或可能相關的材料；客觀地提出證據和陳詞；申述控方立場時堅定不移，進行訟辯時有禮有節；以及在有需要時驗證或據理質疑辯方的立場。最重要而且必須強調的是，提出檢控的目的並不是要令被告入罪，而是要公平公正地提出證據，協助法庭或陪審團作出公正的判決。因此，檢控人員的工作無關“勝敗”，而在於履行公職時秉持誠信、尊嚴，並且發揮專長——這是本科及科內檢控人員奉行的信念，現在如是，將來亦然。

我們一直致力以最高標準處理刑事案件。本科在 2021 年年內為見習律政人員、新入職的檢控官、部門檢控人員和法庭檢控主任提供刑事訟辯培訓課程，讓他們掌握在庭上檢控的實用知識。本科亦舉辦了多個研討會，以確保科內檢控人員了解法律的最新發展。展望未來，我會繼續為檢控人員提供足夠機會磨練審訊和上訴層面的訟辯技巧。在適當情況下，年資較淺的檢控官會由經驗較豐富的同事帶領，確保得到充足的指引和監督。我的目標是通過這些持續的培訓和發展計劃，為社會提供最高標準和最優質的檢控服務。

近年，部門面臨一項無可避免的挑戰，就是本科處理的案件性質甚具爭議，導致檢控人員和檢控決定受到偏頗、毫無根據的批評。該等說法無視某些案件中支持檢控決定的實際情況，以及對法院的裁決或判刑理由視而不見。這些毫無基礎的批評有損公義的彰顯。

即使面對上述種種挑戰，我們仍克盡厥職為大眾利益服務，不單閉門於辦公室和法庭內，更會走進社區。2021 年 11 月，本科舉辦國際刑事法律研討會，邀請來自本港和多個海外司法管轄區的知名法官、法律執業者，以及學者聚首一堂，就多個刑事法律的重要議題交換意見。研討會吸引逾 900 人參加。此外，我們的檢控人員不時主持校園講座，講解本科的工作、刑事司法制度及選定的刑事法課題。我相信公眾

The duty to act fairly and in the public interest extends to govern prosecutors' work in the courtroom, where our primary concern is to ensure fairness of the proceedings. "Fairness" in this context includes, for example, the disclosure of all material which are or may potentially be relevant to the defence, the objective presentation of evidence and submissions, and the exercise of firm but courteous advocacy in advancing the prosecution's position and, where necessary, testing or challenging with grounds the position adopted by the defence. Above all, it must be emphasized that the purpose of bringing a prosecution is not to secure a conviction, but to present evidence in a fair and impartial manner to assist the court or jury in reaching a just result. For this reason, the work of prosecutors excludes notions of "winning" or "losing". It is a matter of public duty to be performed with integrity, dignity, and skill – values by which the work of the Division and our prosecutors abide and will always abide.

We continually strive to apply the highest of standards in our handling of criminal cases. Throughout 2021, the Division delivered training courses in criminal advocacy to legal trainees, newly recruited public prosecutors, departmental prosecutors, and court prosecutors, equipping them with the practical know-how of conducting prosecutions in court. Various seminars have also been arranged to ensure our prosecutors are kept abreast of latest developments in the law. Looking ahead, I will continue to ensure that our prosecutors are given ample opportunity to hone their advocacy skills at both the trial and appellate levels. Where appropriate, junior prosecutors will be led by more experienced colleagues to ensure adequate guidance and supervision. With these ongoing training and development initiatives, I make it our goal to bring to the community a prosecution service of the highest standard and caliber.

An inevitable challenge facing our Department in recent years has been the controversial nature of cases handled by our Division. This has led to biased and baseless criticisms levied against our prosecutors and prosecutorial decisions. These statements evince a disregard of the factual realities leading to prosecution of certain cases, and of the reasons given by the court in reaching a verdict or passing a sentence. Such unfounded criticisms are inimical to the due administration of criminal justice.

In the face of these challenges, we endeavored to discharge our duty to serve the public good not only behind the closed doors of the office and courtroom,

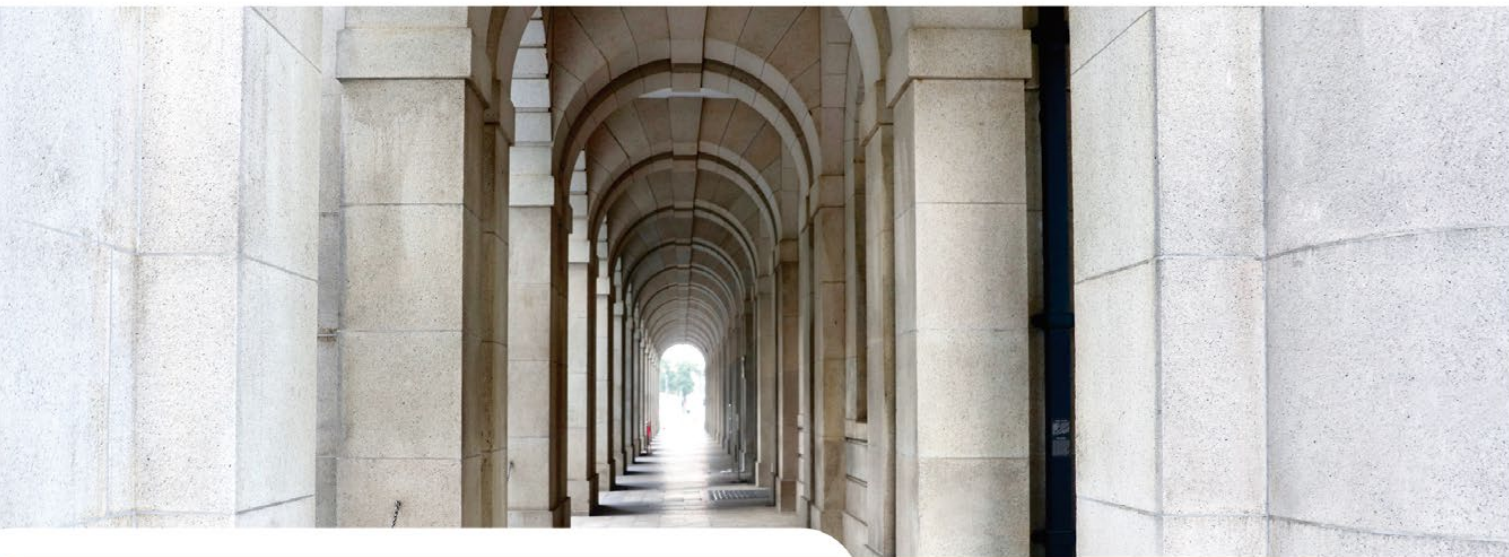


可通過社區外展活動，充分了解檢控人員的角色和刑事法的運作，從而增強對本科伸張刑事司法公義的信心和支持。

檢控人員是秉行公義者，肩負代表公眾並按公眾利益行事的崇高使命，職務艱巨但光榮。縱使本科在可見日子仍要面對繁重工作的挑戰，但我深信我們熱切追求公義的堅定信心會帶領我們順利克服逆境。最重要的是，我會確保本科繼續以正直、誠實和廉潔之心秉行公義。憑着各同事和公眾的鼎力支持，我們攜手竭盡全力，為這個我們視之為家的社會堅守法治。

but also within the community itself. In November 2021, the Division hosted the International Criminal Law Conference, in which distinguished judges, practitioners, and academics from Hong Kong and several overseas jurisdictions gathered to exchange views on a number of important criminal law issues, attracting over 900 participants. From time to time, our prosecutors deliver school talks about our work, the criminal justice system, and selected criminal law topics. I believe that through community outreach, the public will gain an informed understanding about the role of prosecutors and the operation of the criminal law. This will, in turn, nourish public confidence and support in our pursuit of criminal justice.

Prosecutors are ministers of justice charged with the noble calling to act for and in the interests of the public. The duty is onerous but honorable. While heavy caseload will remain a challenge for our Division in the foreseeable future, I firmly believe that our unwavering commitment to a fervent pursuit of justice will lead us to overcome adversity with flying colours. Most importantly, I will see to it that our Division continues to deliver justice with integrity, honesty, and probity. With strong support from my colleagues and the public, we will together make every effort to uphold the rule of law for the community which we all call home.



司法人員任命 Judicial Appointments

黎婉姬法官

黎婉姬法官於 1992 年加入當時的律政署為檢察官，三年後晉升為高級檢察官。她在部門服務 27 年間，曾檢控各式各樣矚目且複雜的原訟和上訴案件，包括殺人、強姦、公職人員行為失當和欺詐案。她對檢控工作的熱忱廣受業界和律政司認同。黎法官於 2011 年晉升為副首席政府律師，於 2016 年獲委任為資深大律師，是香港首位女檢控官獲此殊榮。2017 年，她擔任首席政府律師，主管訟辯及上訴分科。

黎法官於 2019 年離開律政司，其後一直私人執業，並於 2020 年和 2021 年獲委任為高等法院原訟法庭暫委法官。2021 年 11 月，她獲委任為高等法院原訟法庭法官。

The Honourable Madam Justice Anna Lai Yuen-kee

Madam Justice Lai joined the then Attorney General's Chambers as a Crown Counsel in 1992 and was promoted to Senior Crown Counsel three years later. During her 27 years of service with the Department, she prosecuted a wide array of high-profile and complex cases, including homicide, rape, misconduct in public office and fraud, at first instance or on appeal. Her enthusiasm in the prosecutorial work was highly recognized by the profession and the Department. In 2011, she was promoted to Deputy Principal Government Counsel. In 2016, she became the first female public prosecutor appointed as Senior Counsel in Hong Kong. In 2017, she took up the post of Principal Government Counsel, in charge of the Advocacy and Appeals Sub-division.

Madam Justice Lai had been in the private practice since she left the Department in 2019. In 2020 and 2021, she had been appointed as Deputy Judge of the Court of First Instance of the High Court. In November 2021, she was appointed as Judge of the Court of First Instance of the High Court.

彭寶琴法官

彭寶琴法官在 1995 年加入當時的律政署，三年後晉升為高級政府律師；在律政司任職 15 年間，曾派駐不同組別，包括基本法及人權法案組、管理及培訓組，專責處理反恐活動、三合會及有組織罪行和海關案件的重案檢控工作。2001 年，她在香港大學取得法學碩士（人權）學位，2007 年晉升為副首席政府律師，一直擔任基本法、人權及司法覆核組的主管，至 2010 年獲委任為區域法院法官。

彭法官在 2013 年獲委任為高等法院原訟法庭法官。2021 年，她以與國家安全有關案件的指定法官身分，與另兩名指定法官共同審理香港首宗國家安全案件。2021 年 8 月，她獲委任為高等法院上訴法庭法官。

特委法官 許紹鼎資深大律師

特委法官許紹鼎資深大律師在 1995 年加入當時的律政署擔任助理檢察官，1996 年獲委任為檢察官，2000 年晉升為高級政府律師。他在 2011 年出任高級助理刑事檢控專員，2013 年在香港大學取得法學碩士（人權）學位，2015 年獲委任為資深大律師，並成為副刑事檢控專員（暨人事主管）。他在本科工作 24 年間，曾派駐幾乎每個組別，包括區域法院案件籌備、管理及培訓、商業罪案、廉政公署、重案檢控、上級法院上訴、裁判法院上訴、人權，以及裁判法院法律指引等組別。他於 2019 年離開律政司轉為私人執業前，掌管本科的政策及政務、犯罪得益，以及部門檢控等組別。

許法官曾出任高等法院暫委法官，其後於 2021 年 1 月獲委任為高等法院原訟法庭特委法官。

The Honourable Madam Justice Anthea Pang Po-kam

Madam Justice Pang joined the then Attorney General's Chambers in 1995 and was promoted to Senior Government Counsel three years later. During her 15 years with the Department, she had been attached to various sections including the Basic Law and Bill of Rights Section and the Management and Training Section. She was a Court Specialist for Anti-terrorism, Triad and Organized Crimes as well as Custom and Excise. She acquired LL.M. in Human Rights from the University of Hong Kong in 2001. In 2007, she was promoted to the Deputy Principal Government Counsel leading the Basic Law, Bill of Rights and Judicial Review Section until her appointment as a District Judge in 2010.

Madam Justice Pang was appointed as Judge of the Court of First Instance of the High Court in 2013. In 2021, she, as one of the designated judges for national security related cases, conducted the trial of the first national security case in Hong Kong together with two other designated judges. In August 2021, she was appointed as a Justice of Appeal of the Court of Appeal of the High Court.

Mr Recorder Martin Hui SC

Recorder Hui SC first joined the then Attorney General's Chambers as an Assistant Crown Counsel in 1995. He was appointed as Crown Counsel in 1996 and promoted to Senior Government Counsel in 2000. He became Senior Assistant Director of Public Prosecutions in 2011 and obtained a Master of Laws (Human Rights) degree at the University of Hong Kong in 2013. He was appointed Senior Counsel and became Deputy Director of Public Prosecutions (cum Chief of Staff) in 2015. In his 24 years with the Division, he had been attached to almost every section including District Court Trial Preparation, Management & Training, Commercial Crime, ICAC, Court Specialists, Higher Court Appeals, Magistracy Appeals, Human Rights and Magistrates Court Advisory. Before he left the Division and joined private practice in 2019, he was in charge of Policy and Administration of the Division as well as Proceeds of Crime and Departmental Prosecutions.

Recorder Hui SC had served as a Deputy High Court Judge before he was appointed as Recorder of the Court of First Instance of the High Court in January 2021.



資深大律師任命 Senior Counsel Appointment

副刑事檢控專員

林穎茜資深大律師

2021年5月29日，副刑事檢控專員林穎茜獲終審法院首席法官委任為資深大律師。這項委任是根據《法律執業者條例》（第159章）第31A條，在考慮林專員的能力、法律知識和經驗並諮詢大律師公會執行委員會主席及香港律師會會長後作出。

林專員是由律政司孕育出來的資深大律師，她是1997年中國恢復對香港行使主權後的首批律政司見習律政人員的其中一員。完成在律政司的實習後，她在1999年獲認許為事務律師，自此一直在律政司擔任檢控官。2020年9月，她休假完成為期三個月的大律師實習後轉為大律師。

Vinci Lam SC

Deputy Director of Public Prosecutions

On 29 May 2021, Ms Vinci Lam, Deputy Director of Public Prosecutions, was appointed as Senior Counsel by the Chief Justice of the Court of Final Appeal. The appointment was made pursuant to section 31A of the Legal Practitioners Ordinance (Cap. 159), having taken into account Vinci's ability, knowledge of the law and experience and after consultation with the Chairman of the Bar Council of the Hong Kong Bar Association and the President of The Law Society of Hong Kong.

Vinci is our home-bred Senior Counsel. She was amongst our first batch of legal trainees after the resumption of sovereignty by China in 1997. Having completed her training with the Department, she was admitted as a solicitor in 1999 and has been a public prosecutor ever since. In September 2020, she switched over and became a

師，其後返回工作崗位繼續履行副專員的職責。

司法機構的委任公告提及林專員的工作是“專責處理刑事上訴工作”。的確，林專員早在2000年便已開始處理在高等法院原訟法庭審理的上訴案件，不久之後更處理在上訴法庭及香港終審法院（「終審法院」）審理的上訴案件。林專員早於2010年及2013年先後以訟辯律師而非領訟大律師副手身分，分別在終審法院上訴委員會及終審法院合議庭席前訟辯，兩次的對手都是資深大律師，而她當時僅是高級檢控官。多年來，林專員經常在全部三級上訴法院（包括終審法院）出庭訟辯，而庭上另一方的代表大律師往往是資深大律師。由於大部分上訴案件均由辯方提起，林專員便以答辯人的代表律師身分為香港特別行政區出庭訟辯，但她也曾代表律政司司長負責多宗由控方就刑事案件提起的上訴案件及刑期覆核申請。

林專員身為資深檢控官，當然也曾在各級原審法院的審訊（包括在高等法院原訟法庭設有陪審團的審訊）中出庭檢控，並曾在死因研訊中擔任死因裁判人員。林專員目前專責監督商業罪案包括洗黑錢及商業詐騙，由廉政公署調查的案件例如貪污及選舉舞弊，由證券及期貨事務監察委員會（證監會）調查的案件例如操控證券市場和內幕交易及由稅務局調查的案件例如逃稅等。

正如在終審法院舉行的委任儀式中提到，林專員感謝首席法官予以委任。她認為是次委任不僅肯定了其能力，也反映曾經在一些案件中帶領她出庭訟辯的領訟大律師的出眾才能，以及多年來一眾與她一同出庭、資歷較淺的同事的潛能。她視這次委任是對檢控工作的重要性給予肯定，並將之歸功於她以往效力的幾位律政司司長、刑事檢控專員和領訟大律師的指引和支持，以及一同出庭的檢控官和部門內提供支援的同事，特別是刑事檢控科上訴事務小組的同事所給予的協助和支持。她對此心存感激。林專員期盼今後繼續維護法治、秉持公義，並且充滿期待，希望看見部門日後孕育更多資深大律師。

林專員是律政司史上第二位出任律政人員期間獲委任的女資深大律師。第一位是前副刑事檢控專員，現為高等法院原訟法庭黎婉姬法官。

barrister after taking leave from the office to serve her pupillage for three months. She then returned to the office and continues to discharge her duties as a deputy director.

In the Judiciary's appointment announcement, Vinci's practice was described as "specialising in criminal appellate work". Indeed, Vinci started prosecuting appeals in 2000 in the Court of First Instance of the High Court then soon after the Court of Appeal and the Hong Kong Court of Final Appeal ("CFA") as well. Her first appearance as the advocate, not as junior counsel, before the Appeal Committee of the CFA was in 2010 and before the full bench at the CFA in 2013, both against Senior Counsel and when she was a senior public prosecutor. Over the years, Vinci has frequently appeared in all three levels of appellate court including the CFA, often with Senior Counsel on the opposite side. Whilst most appeals are initiated by the defence and Vinci appears on behalf of the respondent for the HKSAR, she has also conducted many appeals and applications for review of sentence initiated by the prosecution for the Secretary for Justice in criminal matters.

Being a seasoned public prosecutor, Vinci has also prosecuted trials in all levels of trial court, including jury trials and acted as the coroner's officer in death inquests. She currently oversees white-collar crimes including money laundering and commercial frauds, cases investigated by the Independent Commission Against Corruption (ICAC) such as bribery and election crimes, cases investigated by the Securities and Futures Commission such as stock market manipulation and insider dealing, and cases investigated by the Inland Revenue Department such as tax evasion.

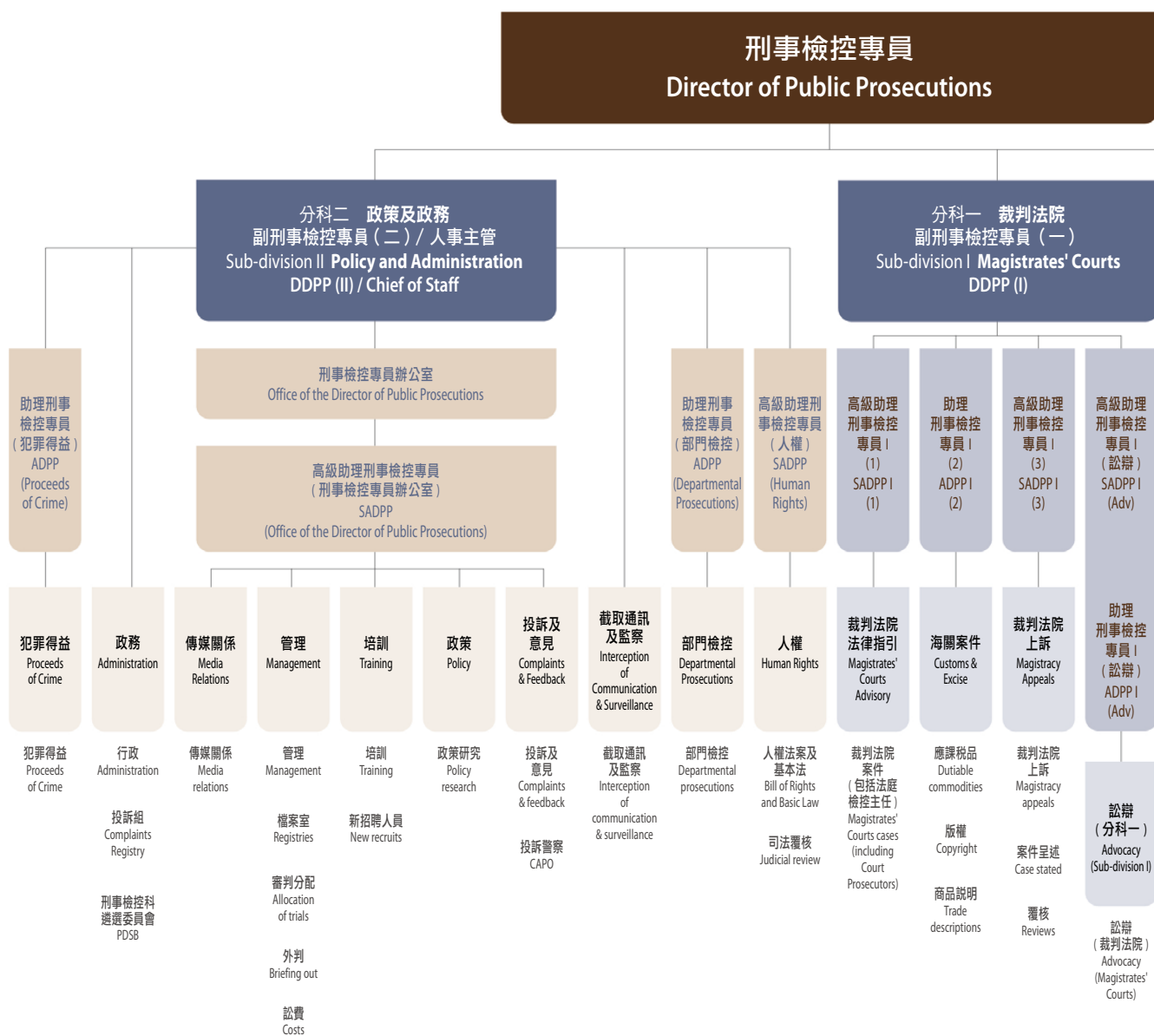
As given in the speech at the Senior Counsel Appointment Ceremony held at the CFA, Vinci thanks the Chief Justice for the honour of appointment. She reckons the appointment as not only a recognition of her own ability but also a reflection of the prowess of her leaders and the potential of many junior colleagues who have been her co-counsel over the years. She regards the appointment as also a recognition of the importance of prosecutorial work. She attributes her appointment to the guidance and support she received from the several secretaries for justice and directors of public prosecutions whom she has served and also that from her leaders, co-counsel and the supporting staff in the Department in particular the Appeals Unit in the Prosecutions Division. She is grateful to all of them. Vinci looks forward to continuing to uphold the rule of law and serve the interests of justice. She also looks forward to and is hopeful of seeing more Senior Counsel in the Department.

Vinci is the second female Senior Counsel appointed whilst serving as a legal officer in the history of the Department of Justice, the first being Miss Anna Lai, former Deputy Director of Public Prosecutions and now The Honourable Madam Justice Lai.

架構及職責 Structure and Duties

刑事檢控科組織圖表

Prosecutions Division Organization Chart



圖例 Legend

DDPP = Deputy Director of Public Prosecutions

SADPP = Senior Assistant Director of Public Prosecutions

ADPP = Assistant Director of Public Prosecutions

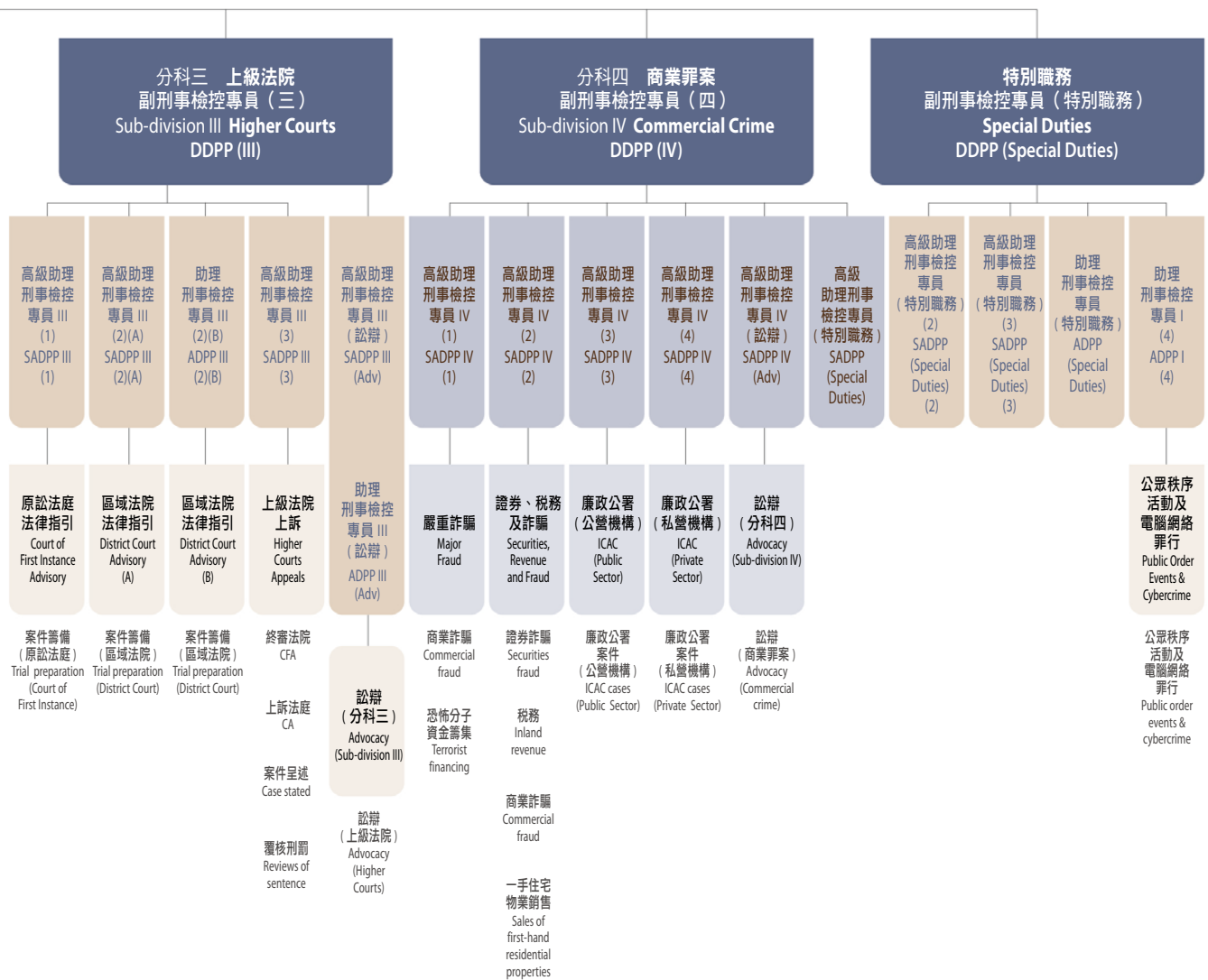
CFA = Court of Final Appeal

CA = Court of Appeal

ICAC = Independent Commission Against Corruption

PDSB = Prosecutions Division Selection Board

CAPO = Complaints Against Police Office



		編制 Establishment	人手 Strength
首長級人員	Directorate Officer	27	23
高級政府律師	Senior Government Counsel	82	67
政府律師	Government Counsel	61	67
法庭檢控主任職系	Court Prosecutor Grade	102	88
律政書記職系	Law Clerk Grade	36	27
法律翻譯主任職系	Law Translation Officer Grade	9	7
其他支援人員	Other support staff	243	220
總數	Total	560	499

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.



分科一——裁判法院

Sub-division I - Magistrates' Courts

分科一（裁判法院）主要負責在裁判法院就涉及一般罪行的案件提供法律指引和進行籌備／檢控工作，並處理由該等案件衍生的上訴及覆核，以及就有關反走私、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。

Sub-division I (Magistrates' Courts) is mainly responsible for providing advice on and preparing for/prosecuting cases involving general crimes in the magistracy, and conducting appeals and reviews derived therefrom, and also 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.

2021 年，2019 冠狀病毒病疫情持續對香港各界造成影響，法庭事務亦不例外。儘管面對逆境，連同 80 名法庭檢控主任，本科一眾檢控官不懈地在裁判法院層面履行提供法律指引的主要職務。該分科所處理的案件性質廣泛，案情的敏感和複雜程度也各異。罪行種類包括如襲擊、性虐待、三合會、賣淫和危險藥物的嚴重罪行，也包括涉及洗錢、詐騙、盜用公款、使用虛假文書、虛假商標、侵犯版權、保障消費者權益、不良營商手法等白領罪行。

裁判法院在本年處理共 148,282 宗刑事案件，而該分科曾提供共 6,262 項法律指引。控方根據《裁判官條例》(第 227 章)第 104 條就裁判官的決定、裁決、命令或判刑提出的覆核案件有 31 宗，其中 20 宗獲判決得直，11 宗被駁回；而涉及被告就裁判官的決定、裁決、命令或判刑提出的裁判法院上訴有 655 宗，其中 165 宗被原訟法庭駁回，65 宗獲判決得直，223 宗由被告撤回。

犯罪趨勢和模式的轉變，往往反映社會變遷。近年，社會日益重視動物福利。市民對執法機構迅速及時地調查和檢控涉及疏忽照顧、虐待和殘酷對待動物的案件寄予更高期望。本年，我們就多宗公眾關注的殘酷對待動物案件提供法律指引。在香港特別行政區訴黃綺婷(屯門裁判法院刑事案件 2021 年第 1457 號)一案中，被告攝錄了她把寵物貓放入洗衣機並按下洗衣機的啟動/停止按鈕的過程。在香港特別行政區訴蘭天琪(東區裁判法院刑事案件 2021 年第 1054 號)一案中，被告帶其寵物貓到獸醫診所求診，並告訴獸醫他曾打該貓，這與貓隻頭部受創的診斷結果一致。兩名被告經審訊後被裁定“殘酷對待動物”罪名成立，被判處適當刑罰。與此同時，我們深明與執法機構分享知識甚為重要。本司的檢控人員在 2021 年 7 月為警務人員舉辦了關於檢控殘酷對待動物罪行的分享會，課題涵蓋決定合適控罪和審訊階段的常見問題等。

窺淫是對受害人尊嚴和私隱的公然冒犯和侵犯，隨着科技進步，窺淫罪行在香港越見普遍。過往，本港並無有關拍攝裙底或窺淫的特定罪行。於 2021 年 10 月 8 日生效的《2021 年刑事罪行(修訂)條例》，就窺淫、非法拍攝或觀察

In the year 2021, the COVID-19 pandemic continued to impact almost all walks of life in Hong Kong, with court business being no exception. Despite such adversity, prosecutors including 80 court prosecutors in this division continued to take charge of the principal advisory duties in the level of the Magistrates' Courts. The nature of the cases this Sub-division dealt with is wide-ranging, which involves various degree of factual sensitivity and complexity. The variety of the offences spans from hard-core crimes including assault, sexual abuse, triad, vice, and dangerous drugs to white-collar crimes involving money laundering, deception, embezzlement, using false instruments, false trademarks, copyright infringement, consumer rights protection, and unfair trade practices.

In this year, a total of 148,282 criminal cases had been dealt with in the Magistrates' Courts. A total of 6,262 pieces of advice were given by this Sub-division. There were 31 review cases initiated by the Prosecution under s.104 of the Magistrates Ordinance (Cap. 227) against a magistrate's decision, verdict, order or sentence (of which 20 were allowed and 11 dismissed), and 655 magistracy appeals brought by defendants against a magistrate's decision, verdict, order or sentence (of which the Court of First Instance dismissed 165 and allowed 65, whereas 223 were withdrawn by the defendants).

The shift in the trends and patterns of crime is often a reflection of social change. In recent years, there has been a growing awareness of animal welfare in our society. The general public has a higher expectation placed upon law enforcement agencies to investigate and prosecute cases involving animal neglect, abuse and cruelty in a swift and timely fashion. In this year, we have provided legal advice to a number of cases concerning animal cruelty which arouse public attention. In *HKSAR v Wong Yee-ting* TMCC 1457/2021, the defendant took a video of her placing her pet cat in a washing machine and pressing the start/stop button of the washing machine. In *HKSAR v Lan Tianqi* ESCC 1054/2021, the defendant brought his pet cat to a veterinary for medical treatment and told the veterinary he hit the cat, which was consistent with the medical diagnosis that the cat suffered from head trauma. Both defendants were convicted after trial with "cruelty to animals" and were duly sentenced. Meanwhile, the importance of knowledge sharing with law enforcement agencies is recognized. Our prosecutor delivered a sharing session to police officers on the prosecution of the offence of animal cruelty in July 2021. The sharing covered topics such as the appropriate charges to be laid and common issues encountered in the trial stage.

Voyeurism is an affront to the dignity of the victim and blatant intrusion of the victim's privacy. With the advancement in technology, it has become a prevalent crime in Hong Kong. Previously, there were no specific offences in Hong Kong for up-skirting or voyeurism. The Crimes (Amendment) Ordinance 2021 came into effect on 8 October 2021 in which specific

私密部位、發布源自這兩項罪行的影像，以及未經同意下發布或威脅發布私密影像訂立特定罪行。在條例生效後，該分科提供了法律指引，為新法例下的新罪行制訂一致的檢控方向。檢控官亦在法例訂立後展開首數宗窺淫案件的檢控工作。該分科在 2022 年將繼續密切留意各案例的最新發展，並會與執法機關攜手合作，確保新法例能順利有效執行。

“起底”行為近年變得猖獗。此類行為不僅侵犯個人私隱，而且往往為受害人帶來極大痛苦。不少個案均涉及個別人士的個人資料被惡意非法披露。為更有效打擊“起底”行為，《2021 年個人資料(私隱)(修訂)條例》於 2021 年 10 月 8 日正式生效。《個人資料(私隱)條例》(第 486 章)第 64 條針對“起底”行為，引入新的兩級制罪行，把以下行為刑事化：在未獲資料當事人的同意下，披露該當事人的個人資料，而披露者的意圖是導致該當事人或其家人蒙受指明傷害，或披露者罔顧此類傷害發生。個人資料私隱專員亦獲授權對某些“起底”罪行自行展開刑事調查和提出刑事檢控。鑑於個人資料私隱專員獲賦予額外權力，該分科與個人資料私隱專員公署(私隱專員公署)保持溝通和磋商，以制訂律政司和私隱專員公署之間根據《個

offences were introduced against voyeurism, unlawful recording or observation of intimate parts, publication of images originating from these two offences, as well as publication or threatened publication of intimate images without consent. Upon the enactment of the ordinance, legal advice was provided in devising a consistent approach to laying the new offences introduced under the new legislation regime. Prosecutors also commenced prosecution of the first few cases of voyeurism after the enactment of the legislation. Going forward, this Sub-division would continue to keep a close eye on the latest developments of the case law in 2022 and work hand in hand with law enforcement agencies to ensure smooth and effective implementation of the new legislation regime.

Doxxing acts have become rampant in recent years. Not only are such acts intrusive to individuals' privacy but they often cause tremendous distress to the victims. There had been many instances where personal data of individuals were illicitly disclosed with malice. In order to combat doxxing acts more effectively, the Personal Data (Privacy) (Amendment) Ordinance 2021 came into effect on 8 October 2021. New doxxing offences have been introduced in a two-tier structure under section 64 of the Personal Data (Privacy) Ordinance (Cap. 486) which criminalize the disclosure of personal data of a data subject without the data subject's consent with an intent to cause specified harm to the data subject or their family or being reckless to such harm happening. The Privacy Commissioner for Personal Data was also empowered to carry out criminal investigation and institute criminal prosecution of certain doxxing



人資料(私隱)條例》(第486章)調查和檢控“起底”罪行的合作框架。該分科已向私隱專員公署提供法律指引，制定一致的草擬控罪方式。

新一批法庭檢控主任經過兩輪培訓，已於2021年年初履新。12名新入職人員已完成入職課程，並通過終期試和實習試。他們會被調派至各裁判法院，為法庭檢控主任職系注入新血。另一批法庭檢控主任亦已於2021年11月開始入職課程，預期會在2022年8月完成。一名高級二等法庭檢控主任已正署任檢控官。這項署任安排提供絕佳機會，讓有關人員可以開拓視野和汲取工作經驗。

該分科在2021年處理的一些重要案件包括：

(1) 香港特別行政區訴李為民及另13人(區院刑事案件2019年第707號)

這是一宗選舉舞弊案。第一至第四被告人為的士司機從業員總會會員，四人共同被控一項串謀詐騙罪。第一、第五、第六和第九被告人(後三者份屬家人)亦共同被控一項串謀在選舉中作出舞弊行為提供利益予他人罪，至於第五至第十四被告人則各自被控一項在選舉中作出舞弊行為接受利益罪。

第一被告人探究可否藉加入某功能界別而可在2016年立法會換屆選舉中投票。第二被告人按照第一被告人的指示行事，得悉沒有任何資訊科技背景的人也可申請成為電機暨電子工程師學會會員，而成為會員後即可登記成為資訊科技界功能界別的選民。第一被告人根據第二被告人的資料，指示其他被告人招募家人和朋友參與計劃，在選舉中投票給該功能界別的某候選人，報酬為港幣1,000元。最終，被告人聯同其他人招募並協助約240人利用虛假資料(專業資格、學歷及/或經驗)參與其計劃。

第一至第三、第五至第六、第九及第十四被告人在認罪後被定罪，第十至第十三被告人則經審訊後被定罪。一眾被告人被判監六星期至12個月不等(覆核後加刑至六

offences on its own. In light of the additional powers granted to the Privacy Commissioner for Personal Data, this Sub-division maintained communications and negotiated with the Office of Privacy Commissioner for Personal Data ("the PCPD") to devise a framework for cooperation and collaboration between our Department and the PCPD on the investigation and prosecution of doxxing offences under the Personal Data (Privacy) Ordinance (Cap. 486). Legal advice had been given to the PCPD in formulating a consistent approach to the drafting of the charges.

A new batch of court prosecutors after two rounds of training reported duty in early 2021. Twelve new recruits completed the induction course and passed the final and practical examination. They were posted to various Magistrates' Courts to provide fresh energy to the Court Prosecutor Grade. Another batch of court prosecutors started their induction course in November 2021 which is expected to be completed in August 2022. A Senior Court Prosecutor II has been acting as Public Prosecutor. The acting arrangement provides an excellent opportunity to expand one's horizon and broaden his/her working experience.

The significant court cases handled by this Sub-division in 2021 include:

(1) *HKSAR v Li Wai-man and 13 Others*, DCCC 707/2019

This is an election fraud case. D1 to D4, who were members of the Taxi Drivers & Operators Association, were jointly charged with one count of "conspiracy to defraud". D1, D5, D6 and D9 (the latter three being family members) were also jointly charged with one count of "conspiracy to engage in corrupt conduct at an election by offering an advantage to others" whilst each of D5 to D14 were individually charged with one count of "engaging in corrupt conduct at an election by accepting an advantage".

D1 explored the possibility of joining a functional constituency to vote at the 2016 Legislative Council General Election. Acting on D1's instruction, D2 found that persons without any IT background could apply for a membership of the Institute of Electrical and Electronics Engineers, Inc. and once a person became a member, he could register as a voter of the Information Technology Functional Constituency. Using what D2 found, D1 instructed other defendants to recruit family and friends to join the scheme and vote for a candidate of that functional constituency at the election for a HK\$1,000 reward. In the end, the defendants, together with others, recruited and helped about 240 persons to take part in the scheme by using false information about their professional qualification, education and/or experience.

星期至 23 個月不等)。第四及第七至第八被告人的控罪則留在法庭存檔。

(2) 香港特別行政區 訴 朱賢云及另九人 (區院刑事案件 2018 年第 235 號)

在香港特別行政區 訴 朱賢云 (第一被告) 及另九人 (第二至第十被告) (區院刑事案件 2018 年第 235 號) 一案中，海關人員深入調查在旺角通菜街一個出售冒牌貨品的集團。第一至第十被告是該集團的成員，他們經營四個小販檔位，出售冒牌貨品。該集團也在附近租用五個樓上儲物倉。目標顧客主要是外籍遊客。海關人員在採取行動時拘捕被告。經各商標擁有人查核後，該案涉及 11,449 件冒牌貨品，總市值約為 1,100 萬港元。第一至第十被告共同被控串謀出售應用偽造商標的貨品罪。第三被告就搜查處所時發現的 11,800 支香煙被控一項處理《應課稅品條例》適用的貨品罪。第二、第三、第六、第八和第十被告各被控一項違反逗留條件罪。第二被告承認控罪，被判處 13 個月監禁。其後，第一、第三至第七、第九和第十被告經審訊後被定罪，被判處 21 至 32 個月監禁。

D1-3, D5-6, D9 and D14 were convicted upon their own plea whilst D10-13 were convicted after trial. They were sentenced to a term of imprisonment ranging from six weeks to 12 months (increased to six weeks to 23 months on review). The charges against D4 and D7-8 were left on court file.

(2) *HKSAR v Zhu Xianyun and 9 others*, DCCC 235/2018

In *HKSAR v Zhu Xianyun (D1) and 9 others (D2-D10)*, (DCCC 235/2018), Customs officers conducted an in-depth investigation into a syndicate involving the selling of counterfeit goods in Tung Choi Street, Mong Kok. The syndicate consisted of D1-D10 who operated four hawker stalls for the sale of counterfeit goods. The syndicate also rented five upstairs storages in the vicinity. The target customers were mainly foreign tourists. When the operation turned overt, the defendants were arrested. Upon examination by respective trade mark owners, the case involved 11,449 counterfeit goods which carried a total market value of about HK\$11 million. D1-D10 were jointly charged with conspiracy to sell goods to which a forged trade mark was applied. D3 was charged with one count of dealing with goods to which Dutiable Commodities Ordinance applies for the 11,800 sticks of cigarettes found during premises search. D2, D3, D6, D8 and D10 were each charged with one count of breach of condition of stay. D2 pleaded guilty to the charges and was sentenced to 13 months' imprisonment. D1, D3-D7, D9 and D10 were later convicted after trial and sentenced to 21- 32 months' imprisonment.



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、人權組，以及行政及支援組別組成，職責範疇多元化。

2021 年，本分科繼續積極參與對抗 2019 冠狀病毒病的法律工作，尤其是刑事檢控專員辦公室和部門檢控組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。另一方面，分科內律師繼續履行其訟辯職責，為各級法院的審訊和上訴出庭檢控，並參與限制和沒收法律程序。

Sub-division II, with a diverse portfolio of work, is consisted of the Office of the Director of Public Prosecutions (ODPP), the Proceeds of Crime Section, the Departmental Prosecutions Section, the Human Rights Section and the Administration and Support Units.

In 2021, the Sub-division continued to actively take part in legal work in the combat against the COVID-19 epidemic. In particular, the ODPP and the Departmental Prosecutions Section rendered legal advice to policy bureaux and law enforcement agencies on the drafting and enforcement of anti-epidemic legislation. On the other hand, counsel of the Sub-division kept up with their advocacy duties by making court appearances to prosecute trials and appeals at different levels of court as well as attending restraint and confiscation proceedings.

本分科各組別負責的工作重點如下：

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，順暢和有效地履行職務。專員辦公室的職責涵蓋行政和管理、政策、培訓、傳媒查詢，以及有關投訴及意見的事宜，由轄下各組別負責處理。

管理組

管理組的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，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。

2021 年，複雜敏感案件的數目仍然偏高。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，保持高度專業的服務水平。

本組調派律師時，會致力提高資源效益，並同時顧及律師的經驗和培訓需要，使其受益。

政策組

政策組的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，提供法律意見。

本組在 2021 年曾就多項擬議法例提供意見，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) 訂定窺淫、非法拍攝或觀察私密部位等新罪行及相關罪行的《2021 年刑事罪行（修訂）條例草案》；
- (3) 把“起底”行為訂為刑事罪行的《2021 年個人資料（私隱）（修訂）條例草案》；
- (4) 旨在規管另類吸煙產品的《吸煙（公眾衛生）（修訂）條例草案》；

Some of the work undertaken by the different Sections of the Sub-division are highlighted 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 smoothly and efficiently. Its responsibilities, which cover administration and management, policy, training, media enquiries as well as complaints and feedback 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, 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 cases would be handled properly, efficiently and professionally.

In 2021, the number of complex and sensitive cases remained high. The Unit had to exercise additional care in engaging suitable and experienced counsel to handle these cases to ensure that the high level of professional competency expected of the Division is maintained.

The Unit makes deployment of counsel to the maximization of resource effectiveness and, at the same time, for the benefit of counsel in terms of exposure and training needs.

Policy Unit

The main duty of the Policy Unit is to give legal advice on issues relating to prosecution policy arising from proposed new legislation and amendments to existing legislation.

Notable proposed legislation which the Unit had advised upon in 2021 include:

- (1) Subsidiary legislation made under the Prevention and Control of Disease Ordinance (Cap. 599);
- (2) Crimes (Amendment) Bill 2021 which provides for new offences of voyeurism, unlawful recording or observation of intimate parts and related offences;
- (3) Personal Data (Privacy) (Amendment) Bill 2021 which criminalizes doxxing acts;

- (5) 《2021 年業主與租客（綜合）（修訂）條例草案》；
- (6) 《小型無人機令》（第 448G 章）；
- (7) 《法院（遙距聆訊）條例草案》；以及
- (8) 提高違反職業安全與健康相關法例罰則的立法建議。

政策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，以及代表部門出席青少年罪犯問題常務委員會的恆常會議。

培訓組

刑事檢控科致力培訓檢控人員，使他們具備所需技巧，以高度專業水平執行檢控工作。

2021 年，本組為新入職的檢控官、見習律政人員和本司其他科別的律師舉辦了兩班刑事訟辯課程。該密集式課程為期 12 周，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，然後才自行負責有關工作。

我們在 2021 年 7 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 33 名來自政府各決策局 / 部門及自主機構的人員參加。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

傳媒在向社會發放刑事司法制度運作的資訊方面，發揮重要作用。刑事檢控科設有既定機制，確保在合適情況下向傳媒提供相關資訊。專員辦公室負責傳媒關係事務的同事適時提供準確的資訊，協助傳媒作出公正準確的報道。這些資訊包括在公開聆訊中展示的事宜及案件的一般公開資料。

專員辦公室致力與傳媒保持負責任和良好互動的關係，在維持司法制度公開公正的公眾利益與保障刑事司法制度持份者的私隱權之間取得平衡。

- (4) Public Health (Smoking) Bill, which seeks to regulate alternative smoking products;
- (5) Landlord and Tenant (Consolidation) (Amendment) Bill 2021;
- (6) Small Unmanned Aircraft Order (Cap. 448G);
- (7) Courts (Remote Hearing) Bill; and
- (8) Legislative proposal to raise the penalties for contraventions of occupational safety and health-related legislation.

The Policy Unit also regularly gives advice to government bureaux and departments on wide-ranging issues and represents the Department at regular meetings of the Standing Committee on Young Offenders.

Training Unit

The Division aims to equip prosecutors with the necessary skills to conduct prosecution to the highest professional standard.

In 2021, two rounds of Criminal Advocacy Course were organized by the Unit for newly recruited Public Prosecutors, Legal Trainees and counsel from other Divisions of this Department. 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 Magistracies 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 July 2021. A total of 33 participants from various government bureaux / departments and autonomous bodies attended the course which comprised lectures, court visit and mock court exercises.

Media

Media plays an important role in conveying messages to the community on the operation of the criminal justice system. The Prosecutions Division is well placed to assist the media by providing the relevant information when appropriate. Colleagues of the ODPP tasked with media relations work provide timely and accurate information to assist the press in making fair and accurate reports. Such information includes matters presented in open court and general open information about a case.

The ODPP strives to maintain a responsible and dynamic relationship with the media by balancing the public interest in maintaining open justice and the right to privacy of the stakeholders of the criminal justice system.

投訴及意見

投訴及意見組主要負責處理公眾對刑事檢控科的投訴及查詢。本組會就所有投訴展開調查，並按個別個案採取適當行動跟進每宗個案所提事項。本組採取的行動包括獨立覆核對個別案件的不檢控決定、評估覆核刑罰或上訴的勝訴機會，以及檢討在法律程序中所進行的檢控工作。

2021 年，本組處理的投訴及查詢共 398 宗。

犯罪得益組

限制和沒收犯罪得益可防止該等得益被清洗或運用於助長其他形式的罪行。2021 年，本港以至全球社會同樣持續面對 2019 冠狀病毒病疫情所帶來前所未有的難關。犯罪分子利用疫情犯案，從新源頭獲取犯罪得益，例子包括偽造醫療物品、投資詐騙、日新月異的電腦網絡罪案、利用刺激經濟措施的漏洞犯案，以及洗黑錢等。在打擊犯罪活動方面，健全的限制和沒收機制可發揮重要作用，用以充公犯罪分子的非法收益、防止他們把資金用於其他犯罪活動，並起阻嚇作用，以防他人鋌而走險干犯同類罪行。為此，犯罪得益組專責執行香港在追討資產及打擊洗黑錢方面的法例。

本組人員努力不懈，年內合共取得 31 項限制令和 39 項沒收令。被凍結的可變現財產達港幣 2.59 億元，而被法院頒令沒收的犯罪得益總額為港幣 1.48 億元。經變現並撥入政府一般收入的款額達港幣 2.05 億元。下文概述經本組處理的一些值得注意的案件。

在區院刑事案件 2020 年第 853 號一案中，被告人於超過五個月的時間內，在 Telegram 某羣組發布近 2,000 條帖文，煽惑收看者干犯多項罪行，包括縱火及教唆他人襲擊警務人員。其後，他發起“眾籌”，聲稱協助在近期的公眾秩序活動中被捕的人士。被告人承認九項煽惑控罪，被裁定罪名成立。法庭向被告發出沒收令，沒收其從“眾籌”所得的約港幣 150 萬元款項。

在刑事雜項案件 2021 年第 686 號一案中，答辯人涉嫌從事收受賭注活動，被發現曾利用其個人銀行戶口收取合共港幣 9,600 萬元來歷不明

Complaints and Feedback

The Complaints and Feedback Unit is mainly responsible for dealing with complaints and enquiries from the general public concerning the Prosecutions Division. It investigates all complaints and takes appropriate follow-up actions in a case-sensitive manner to address the concerns raised in individual cases. Actions taken by the Unit include conducting an independent review of the decision not to prosecute in a particular case, assessing merits for review of sentence or appeal and reviewing the prosecution conduct in proceedings.

In 2021, the Unit handled a total of 398 cases of complaints and enquiries.

Proceeds of Crime Section

Restraint and confiscation of proceeds of crime prevent such proceeds from being laundered or reinvested to facilitate other forms of crime. In 2021, societies both globally and in Hong Kong have continued to face the unprecedented challenges of the COVID-19 epidemic. Criminals have taken advantage of the epidemic to commit crimes and generate new sources of crime proceeds. Examples include counterfeiting of medical goods, investment fraud, adapted cyber-crime, exploitation of economic stimulus measures and money laundering. In combating criminal activities, a robust system of restraint and confiscation plays an important part in stripping criminals of their illicit gains, preventing them from funding further criminal activities and deterring others who might venture to commit similar crimes. To this end, the Proceeds of Crime Section is a specialized unit dedicated to the enforcement of asset recovery and anti-money laundering laws in Hong Kong.

With the hard work of members of the Section, a total of 31 restraint orders and 39 confiscation orders were successfully obtained in 2021. HK\$259 million worth of realisable property was frozen, and the total amount of crime proceeds ordered to be confiscated was HK\$148 million. A total of HK\$205 million was realised and paid to the general revenue. Some notable cases handled by the Section are summarized below:

In DCCC 853/2020, the defendant published almost 2,000 online posts in a Telegram group over five months to incite viewers to commit various offences, including arson and abetting attacks against police officers. He then asked for “public donation” claiming to assist arrested persons in the recent public order events. He was convicted upon his own pleas of nine counts of incitement. The Court made a confiscation order against him in the amount of around HK\$1.5 million, being the sums he had received from the “public donation”.

In HCCP 686/2021, the respondent was found to have received a



的款項。他被控兩項洗黑錢罪，獲法庭批准保釋但棄保潛逃，其後於 2021 年離世。法庭向答辯人發出沒收令，沒收其港幣 380 萬元，即其所有可變現資產的總值。從限制和沒收犯罪得益的數據來看，本組人員在凍結和追討資產方面的工作，卓有成效。

本組人員亦積極與本地相關團體分享知識，以助他們掌握香港追討資產和打擊洗黑錢法律的最新發展。2021 年 6 月及 11 月，黎健禧檢控官在律師會舉辦的“法律專業人員打擊洗黑錢及恐怖分子資金籌集研討會”上，以“洗黑錢罪行、舉報可疑交易：法律責任與法律專業保密權”為題演說。因應 2019 冠狀病毒病疫情，該研討會採用 Zoom 軟件舉行。2021 年 6 月及 10 月，劉德澤檢控官和黎健禧檢控官在聯合財富情報組每年舉辦的財富調查課程上為執法機關人員主持講座，題為“經驗分享—限制和沒收的法律程序”。這些研討會和講座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。

除執行本地法律外，本組人員也積極與海外同業合作，聯手打擊世界各地的洗黑錢活動。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 是獨立跨政府組織，致力研究打擊洗黑錢及恐怖分子資金籌集活動的政策，並作出建議；而 APG 則是區域組織，着重確保其成員有效執行打擊洗黑錢及恐怖分子資金籌集活動的國際標準。2021 年，本組繼續緊貼 FATF 的最新發展和運作，以及全球打擊洗黑錢及恐怖分子資金籌集活動的措施。本組會繼續注意打擊洗黑錢及恐

total of HK\$96 million of unexplainable deposits via his personal bank accounts upon being suspected of engaging in bookmaking activities. He was charged with two counts of money laundering and released on court bail, but absconded and later passed away in 2021. The Court made a confiscation order against him in the amount of HK\$3.8 million, being the value of the whole of his realisable assets. Restraint and confiscation statistical data indicates that the efforts of members of the Section to freeze and recover assets are proving to be effective.

Members of the Section also actively participated in knowledge sharing with the relevant local bodies, with a view to keeping them abreast of the development of the asset recovery and anti-money laundering laws in Hong Kong. In June and November 2021, public prosecutor Mr Lucas Lai spoke at the “AML/CFT Seminar for the legal professionals” organized by the Law Society on “Money Laundering Offence, Suspicious Transaction Reporting: Legal Obligations & Legal Professional Privilege”. The seminars were conducted via Zoom in view of the COVID-19 epidemic. In June and October 2021, public prosecutors Mr Douglas Lau and Mr Lucas Lai delivered talks to the officers of law enforcement agencies on “Experience Sharing – Restraint and Confiscation proceedings” at the JFIU’s annual Financial Investigation Courses. These seminars and talks 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.

Besides enforcement of domestic legislation, members of the Section proactively cooperated with overseas counterparts in the joint combat against money laundering worldwide. 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 independent inter-governmental body dedicated to examining and recommending anti-money laundering and counter-terrorist financing (“AML/CTF”) policies, whereas APG is a regional body focused on ensuring its members effectively implement the

怖分子資金籌集活動在 2019 冠狀病毒病疫情下的挑戰、威脅和風險。

部門檢控組

部門檢控組為逾 30 個執法機關調查的案件提供法律指引。主要部門包括衛生署、入境事務處、勞工處及食物環境衛生署。本組負責的所有案件對市民大眾的日常生活、福利、健康、安全及其他重要權益均有重大影響。

律師往往須從刑事法律和檢控角度審閱條例草案及建議的法例修訂，並給予意見。與此同時，律師須就眾多罪行條文的標準控罪說明的措辭、執法策略以及就應否覆核裁判官的裁定提供法律指引。

部門檢控組近年內其中一項重大工作涉及《2021 年入境（修訂）條例》的實施，把僱用不可合法受僱的人確立為可公訴罪行，以及訂立新罪行，針對法人團體的人員、合夥人及從事工作的逾期逗留者。裁判官對從事工作的逾期逗留者（香港特別行政區 訴 *Chaijanthuk, Renu*（沙田裁判法院刑事案件 2021 年第 2620 號）及香港特別行政區 訴 *Khatun Suma*（沙田裁判法院刑事案件 2021 年第 2371 號））及其僱主（香港特別行政區 訴 郭少偉（沙田裁判法院刑事案件 2021 年第 2638 號））採用了香港特別行政區 訴 *Usman Butt* 及其他人 [2010] 5 HKLRD 452 一案的量刑標準，即判處認罪的被告人監禁 15 個月。

由部門檢控組處理的其中一宗重要上訴案件為香港特別行政區 訴 肖榮強 [2021] HKCA 23，案中上訴法庭認為有需要對進口瀕危物種標本的人士起阻嚇作用，以制止非法獵殺瀕危物種。法庭指出若此類罪行越趨猖獗，日後的案件應判處更高刑罰。

隨著多個執法機關加強執行現行和新訂的抗疫法例，本組一直與執法機關緊密合作以對抗 2019 冠狀病毒病。

本組在 2021 年為 2452 宗案件提供法律指引，與 2020 年的 2066 宗案件比較，升幅達 18.7%。上述案件當中大部分屬高度敏感和備受傳媒關注的案件。

international standards on AML/CTF. In 2021, the Section continued to keep abreast of the developments and workings of FATF and the AML/CTF initiatives worldwide. The challenges, threats and vulnerabilities in AML/CTF arising from the COVID-19 epidemic would continue to be observed.

Departmental Prosecutions Section

The Departmental Prosecutions Section provides legal advice on cases investigated by law enforcement agencies of more than 30 in number. Some of the major departments are the Department of Health, the Immigration Department, the Labour Department and the Food and Environmental Hygiene Department. All cases within the purview of the Section have a great impact on the general public in terms of their daily lives, welfare, health, safety and other important interests.

Counsel are also often required to vet and comment on bills and proposed legislative amendments from the criminal law and prosecutorial perspective, advise on the wordings of standard offence descriptions of numerous offence provisions, advise on enforcement strategy and whether to review determinations made by magistrates.

One of the major tasks handled by the Departmental Prosecutions Section in the year involved the commencement of the Immigration (Amendment) Ordinance 2021, which made it an indictable offence for employers of persons not lawfully employable, as well as creating new offences targeting officers of body corporates and co-partners, as well as overstayers who take up work. Magistrates have adopted the tariff laid down in *HKSAR v Usman Butt and Others* [2010] 5 HKLRD 452, namely 15 months' imprisonment upon plea, for overstayers who took up work (*HKSAR v Chaijanthuk, Renu* STCC 2620/2021 and *HKSAR v Khatun Suma* STCC 2371/2021) and for employers of prohibited employees (香港特別行政區 訴 郭少偉 STCC 2638/2021).

One of the significant appeals handled by the Departmental Prosecutions Section was *HKSAR v Xiao Rongqiang* [2021] HKCA 23, in which the Court of Appeal recognized the need to deter those who import specimens of endangered species in order to discourage unlawful killing of endangered species. It was held that rampant commission of such offences should attract higher sentences in future cases.

With various law enforcement agencies stepping up their enforcement of the anti-epidemic legislations (both existing and new), the section has been working closely with the law enforcement agencies in the combat against the COVID-19 pandemic.

The Section provided advice in 2,452 cases in 2021, which was a

在香港特別行政區 訴 *Syed Mohamed Rizvi* 及另一人 (九龍城裁判法院刑事案件 2021 年第 1302 號) 一案中，被告人是首兩宗涉及 2019 冠狀病毒病 N501Y 變種病毒株個案的當事人，兩人均向獲授權人員說謊，訛稱互不相識，但他們其實是情侶關係。裁判官分別以監禁四個月及 30 天作為兩名被告人的量刑起點。在香港特別行政區 訴 *李運強* (九龍城裁判法院刑事案件 2021 年第 3338 號) 一案中，一名 2019 冠狀病毒病確診病人逃離醫院，在街上遊蕩逾 60 小時。他承認明知而使他人蒙受感染的風險，被判監禁四個月。

在香港特別行政區 訴 *Chris Alton Coleman* (西九龍裁判法院刑事案件 2021 年第 1166 號) 一案中，被告人在進行檢疫期間離開指定酒店，並且兩度離開竹篙灣檢疫中心，以及襲擊中心的警員。被告人承認控罪，被判監禁五個星期。

在香港特別行政區 訴 *王嘉偉* (觀塘裁判法院傳票案件 2021 年第 13916 號) 一案中，本身為網上喜劇演員的被告人在政府於觀塘新啓用的音樂噴泉以梘液洗澡，並於網上直播過程。被告人的行為導致音樂噴泉及嬉水區因水質懷疑受污染而關閉。被告人被起訴，並被裁定在遊樂場地作出擾亂秩序及不雅的行為罪成。

在香港特別行政區 訴 *Meta-Yulianti* 及其他人 (沙田裁判法院刑事案件 2021 年第 1659 號) 一案中，四名外籍家庭傭工在周日及公眾假期經營並參與營運無牌牙科診所。各被告人均被控違反逗留條件和冒認牙醫，全被裁定罪成。

部門檢控組的律師還積極參與每年舉辦的檢控人員培訓課程，培訓來自多個政府部門及法定機關的非專業檢控主任。整體而言，2021 年是部門檢控組取得豐碩成果的一年。

人權組

本組在 2021 年的主要責任包括就由各級法院的審訊和上訴及司法覆核等刑事事宜衍生的《基本法》及人權問題，從刑事檢控科的角度提供法律指引。

下文特別載述本組於 2021 年處理的兩宗比較重要的案件，分別關於刑事檢控專員不提出檢控

18.7% increase from the 2,066 cases it advised in 2020. Many of these cases are highly sensitive and have attracted much of the media's attention.

In *HKSAR v Syed Mohamed Rizvi and another* KCCC 1302/2021, the defendants were the first two cases of the N501Y variant of COVID-19 and each of them lied to authorized officers, claiming not to know each other when they were in fact in a relationship. The magistrate adopted 4-months and 30-days as the starting point for the defendants. In *HKSAR v Li Wan-keung* KCCC 3338/2021, a COVID-19 patient escaped from the hospital and wandered in the streets for more than 60 hours and was sentenced to four months' imprisonment after pleading guilty to knowingly expose other persons to the risk of infection.

In *HKSAR v Chris Alton Coleman* WKCC 1166/2021, the defendant left his designated hotel whilst undergoing quarantine and twice left Penny's Bay Quarantine Centre and assaulted police officers there. The defendant was sentenced to five weeks' imprisonment after pleading guilty to his charges at the first given opportunity.

In *HKSAR v Wong Kar-wai* KTS 13916/2021, the defendant was an online comedian who showered at the Government's newly opened musical fountain in Kwun Tong with soap and posted a video of himself doing it. The defendant's behaviour caused the musical fountain and wet play area to close owing to suspected contamination of the water. The defendant was prosecuted and found guilty of behaving in a disorderly and indecent manner in a pleasure ground.

In *HKSAR v Meta-Yulianti and others* STCC 1659/2021, four foreign domestic helpers operated and participated in running an unregistered dental clinic during Sundays and Public Holidays. Each defendant was charged with and convicted of breach of condition of stay and falsely pretending to be a dentist.

Counsel of the Departmental Prosecutions Section have also actively participated in training lay prosecutors of a vast number of government departments and statutory bodies in the yearly Departmental Prosecutors Training Course held. All in all, 2021 has been a fruitful year for the Departmental Prosecutions Section.

Human Rights Section

The major responsibilities of the Section in 2021 included giving legal advices from the Prosecutions Division's perspective on Basic Law and Human Rights issues arising in criminal matters including trials and appeals in all level of courts as well as judicial reviews.

Highlighted below are two of the more significant cases that the Section had handled in 2021 concerning the Director of Public



的決定，以及市民提出私人檢控的權利。這兩宗案件在 2021 年對本組構成主要挑戰。

在 *Pang Lok-sze 訴 刑事檢控專員* [2021] HKCFI 1781 一案中，針對刑事檢控專員決定不根據《防止殘酷對待動物條例》（第 169 章）檢控一宗懷疑殘酷對待動物個案的兩名疑犯而提出的司法覆核許可申請被拒。申請人堅稱刑事檢控專員的決定不合法、有悖常理和不合理，以及刑事檢控專員沒有在法定檢控時限屆滿前的合理時間內向公眾傳達其決定，以讓公眾有足夠時間提出私人檢控。在裁定刑事檢控專員的決定不可予以司法覆核時，法庭申明，根據《基本法》第六十三條，律政司主管刑事檢控工作，其獨立性不受司法干涉，只有在極罕見的情況下才會例外，例如有證據證明律政司遵照政治指示行事或不真誠地行事，以致法庭裁定有關檢控決定違憲。法庭考慮本案證據後，裁定申請人援引的理據與“真正例外情況”相去甚遠，不足以致使刑事檢控專員的決定違憲及可予以司法覆核。法庭亦裁定公眾（及申請人）就在檢控時限屆滿前的“合理時間”內獲告知刑事檢控專員的決定並無“合理期望”，因為此舉會佔用調查時間，有違容許控方在檢控時限屆滿前有整整六個月時間發出傳票的立法原意。

在 *郭德英 訴 香港特別行政區及律政司司長* [2021] 4 HKLRD 841 一案中，申請人提出私人檢控，控告時任廣播處長（處長），指他身為公職人員行為不當，讓多個含有誤導和失實資訊的電視及新聞節目播放，違反普通法並可根據《刑事訴訟程序條例》（第 221 章）第 101(1) 條予以懲處。申請人也申請向處長發出傳票，但因欠缺表面證據而遭裁判官拒絕。上訴法庭駁回申請人就裁判官裁決所提出的上訴，並裁定

Prosecution's decision not to prosecute and the citizen's right to initiate private prosecutions which constituted a major challenge to the Section in 2021.

In *Pang Lok-sze v Director of Public Prosecutions* [2021] HKCFI 1781, an application for leave for judicial review against the DPP's decision not to prosecute two suspects for any offence under the Prevention of Cruelty to Animals Ordinance, Cap 169, in respect of a suspected case of animal cruelty was refused. The Applicant asserted that the DPP's decision was unlawful, perverse and irrational and that the DPP had failed to communicate his decision to members of the public within a reasonable time in light of the statutory time bar so as to allow them sufficient time to institute private prosecution. In holding that the DPP's decision was not susceptible to judicial review, the Court reaffirmed that under Article 63 of the Basic Law, the independence of the Department of Justice's control of criminal prosecutions is protected from judicial encroachment except in extremely rare situations such as where there is evidence proving that the Department had acted in obedience to political instruction or is acting in bad faith, such as to cause the Court to find that the prosecutorial decision is unconstitutional. Having considered the evidence in this case, the Court held that the grounds relied by the applicant did not come any way close to "truly exceptional circumstances" so as to render the DPP's decision unconstitutional and subject to judicial review. The Court also held that there was no "legitimate expectation" on the part of the public (and the applicant) to be informed of the DPP's decision and to be informed within a "reasonable time" before the expiry of the time limit for prosecution as this would encroach the time for investigation and would contravene the legislative intent for allowing the prosecution the full 6-month period to lay summons before prosecution is time-barred.

In *Kwok Tak-ying v HKSAR & Secretary for Justice* [2021] 4 HKLRD 841, the Applicant instituted a private prosecution by laying information against the then Director of Broadcasting for allegedly having misconducted himself in public office whereby various television and news programmes containing misleading and distorted information were broadcast, contrary to common law and punishable under section 101(1) of the Criminal Procedure Ordinance (Cap. 221). The applicant also applied for a summons to be issued against the Director which was refused by a magistrate on the ground that there was no *prima facie* case. In dismissing the applicant's appeal against the magistrate's decision, the Court of Appeal held that the right of private prosecution is not absolute. Whilst a private prosecutor had a right to institute a prosecution, his right to continue is limited by reference to the power of the Secretary for Justice to intervene by virtue of her exclusive power to control criminal prosecutions under Article 63 of the Basic Law. On the materials relied on by the applicant, the Court was satisfied that there was simply no *prima facie* evidence to establish the necessary ingredient of *mens rea* by

提出私人檢控的權利並非絕對。非官方檢控人有權提出檢控，惟律政司司長憑藉《基本法》第六十三條所賦予主管刑事檢察工作的獨有權力有權介入檢控，非官方檢控人繼續檢控的權利因而受到限制。就申請人所援引的佐證材料而言，法庭信納根本沒有表面證據證明處長故意作出不當行為而使犯罪意圖的必要元素得以確立。因此，裁判官拒絕應申請人的要求發出私人傳票，做法完全正確。

2021年11月，本組人員出席律政司舉辦的2021年國際刑事法律研討會，在題為“刑法中的人權問題”的討論環節，就人權與刑事法之間的相互作用交流意見。與會講者均是該範疇的權威專家，包括前法官烈顯倫先生，CBE，GBM、御用大律師兼資深大律師余若海先生，SBS，JP，以及資深大律師莫樹聯先生，BBS，JP。他們談及多個範疇，包括法院在刑事訴訟中考慮個人人權時，應如何在個人人權及與之對立的更廣泛社會利益之間取得正確公平的平衡。討論內容重點提到，《基本法》及《人權法案》保障香港居民的言論、集會、遊行和示威自由，惟法院在最近的公眾秩序案件中重申，該等權利並非絕對，會因公眾安全、公共秩序和保護他人的權利與自由而受限。

showing that the Director had wilfully misconducted himself. The magistrate was therefore entirely correct in refusing to issue the private summons sought.

In November 2021, members of the Section attended the International Criminal Law Conference 2021 organised by the Department of Justice with a special feature on “Human rights considerations in the criminal law context” in which the interplay between human rights and criminal law was addressed. Distinguished speakers who are experts in the field including Mr Justice Henry Litton, CBE, GBM, Mr Benjamin Yu, SBS, QC, SC, JP, and Mr Johnny Mok, BBS, SC, JP spoke about various aspects including how should the Courts strike a right and fair balance against the competing and broader societal interests in considering individual human rights in criminal proceedings. It was highlighted that the Basic Law and the Bill of Rights guarantee the rights to freedom of speech, assembly, procession and demonstration for Hong Kong residents. However, the Courts reiterated in recent public order cases that these rights are not absolute and are subject to restrictions in the interests of public safety, public order and the protection of others’ rights and freedoms.





分科三 — 上級法院

Sub-division III - Higher Courts

分科三的檢控官負責處理上級法院審理的案件，從提供法律指引開始以至跟進審訊及上訴。該分科的四個工作範疇分別是：(i) 原訟法庭法律指引；(ii) 區域法院法律指引；(iii) 上級法院上訴；以及 (iv) 訟辯。

Public Prosecutors in Sub-division III deal with cases to be tried in the Higher Courts, starting from advisory stage to trial and appeal. Sub-division III comprises four areas of work, namely (i) Court of First Instance Advisory; (ii) District Court Advisory; (iii) Higher Courts Appeal; and (iv) Advocacy.

原訟法庭法律指引組及區域法院法律指引組的檢控官主要負責就原訟法庭和區域法院審理的刑事案件向執法機關提供法律指引，並根據《檢控守則》闡明的兩個階段準則決定是否就某宗案件提出檢控。準則的兩個階段是：首先判斷案件的證據是否充分，有否合理機會達致定罪；如有，再考慮提出檢控是否符合公眾利益。該兩個組別的檢控官也會就適當的控罪和適當進行審訊的法院提供法律指引，確保案件得到妥善的審前準備。上級法院上訴組的檢控官負責處理各級上訴法院的上訴案件及其他相關事宜（裁判法院上訴除外），而訟辯組的檢控官則主要負責檢控各類性質敏感的刑事審訊。

近年，分科三處理的案件數量持續繁多。該分科在 2021 年的工作量再度激增。儘管如此，分科三的成員仍然全力以赴，務求以最佳水平履行職務。

分科三在 2021 年的工作範疇及一些備受關注的案件，現重點載述如下：

分科三第 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。

檢控官負責就證據是否充分及適當的控罪提供法律指引，並會在提供指引後處理有關案件的交付審判程序的事宜及相關法律程序，以確保案件適時交付原訟法庭作審訊或判刑。

如被告在交付審判程序承認控罪，案件便會交付到原訟法庭作判刑。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，並會出席在原訟法庭的判刑聆訊。

如被告在交付審判程序否認控罪，案件便會交付到原訟法庭作審訊。檢控官會擬備並存檔公訴書，以及遞交標明頁碼的交付文件冊。檢控官亦會與出席庭審的檢控人員緊密合作，包括處理提交有關附加證據、向辯方披露案件資料及出席案件管理聆訊，以便在有需要時提供意見。

Public Prosecutors in Court of First Instance Advisory and District Court Advisory Sections are primarily responsible for advising law enforcement agencies on criminal cases to be tried in the Court of First Instance and in the District Court. They decide whether or not to prosecute in accordance with a two-stage test enunciated in the Prosecution Code. The two-stage test is firstly, whether there is sufficient evidence to support a reasonable prospect of conviction; and if so, whether the public interest warrants that prosecution be conducted. Public Prosecutors in the two sections also advise on the appropriate charges to be laid and the proper venue of trial, ensuring that cases are properly prepared for trial. Those in Higher Courts Appeal Section handle appeals and other related matters at all levels of appellate courts except for magistracy appeals, whilst those in Advocacy Section primarily prosecute a broad range of sensitive criminal trials.

Caseload has consistently been heavy in recent years, year 2021 saw yet another boom in the amount of work handled by members of Sub-division III, who strived to discharge their duties to the highest standard nonetheless.

The areas of work of Sub-division III in 2021 are set out below where some notable cases are highlighted:

Section III(1) – Court of First Instance Advisory

The Court of First Instance (“CFI”) Advisory Section gives 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, robbery, etc.

Public Prosecutors 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 the committal proceedings, 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 the committal proceedings, 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.

在 2021 年，交付原訟法庭的案件有 243 宗，其中 102 宗交付審訊，141 宗交付判刑。另有兩宗案件被告根據《裁判官條例》(第 227 章)第 80C(1) 條選擇以裁判法院初級偵訊的方式進行聆訊；還有一宗依據《區域法院條例》(第 336 章)第 77A(4) 條的移交令將案件由區域法院移交原訟法庭審訊。此外，有 10 份公訴書按上訴法院的重審令而提交法庭存檔。

該組處理的一些重要案件包括：

- (1) 在香港特別行政區 訴 *Tursen Chris* [2021] HKCFI 3166 一案中，被告承認兩項搶劫罪，被交付原訟法庭判刑。該兩項控罪的案情顯示，被告犯案時戴上黑色口罩和黑色短假髮，進入當時只得一名女店員的店舖，持類似手槍物體指向受害店員頭部，然後劫去店舖及 / 或受害人的財物。被告兩次犯案時都用電線膠索帶捆綁受害人的手腕和腳踝。警方在調查後鎖定被告居住的大廈，安排埋伏行動。在被告離開住所棄置一個黑色垃圾袋時，警方將他拘捕，並在垃圾袋內找到一支類似手槍的氣槍、一個黑色短假髮、兩包電線膠索帶、七條電線索帶等。法官依據律政司司長 訴 李進豪 [2010] 1 HKLRD 84 案，將每項罪名的量刑起點定為監禁 10 年，以對持仿製槍械行劫發揮阻嚇作用。基於被告認罪，法官將監禁刑期減至六年八個月，而第二項罪名的兩年刑期與第一項罪名的刑期分期執行。被告被判處監禁刑期共八年八個月。
- (2) 在香港特別行政區 訴 關孝孜 [2021] HKCFI 2978 一案中，被告是一名註冊醫生，被控嚴重疏忽誤殺罪，涉案的失職行為包括在抽脂程序中沒有採取合理的謹慎措施以保障病人的福祉、安全和性命。被告在完成三小時手術後離開手術室，把當時仍處於鎮靜和昏迷狀態的病人交由不曾接受醫學訓練的助手照顧。其後病人被發現沒有反應，被告在接到電話通知後返回手術室。在救護員到達中心時，病人已沒有脈搏，送院後不久證實死亡。控方專家麻醉科醫生認為死因是過度鎮靜、呼吸系統受抑壓、缺氧及心臟停頓，並認為如果被告

In 2021, there were 243 cases committed to the CFI, of which 102 cases were committed for trial, and 141 cases were committed for sentence. In addition, there were two other cases heard by way of preliminary inquiry at the magistracy pursuant to an election by the defendant under section 80C(1) of the Magistrates Ordinance (Cap. 227), and one other case was transferred from the District Court to CFI for trial pursuant to an order of transfer made under section 77A(4) of the District Court Ordinance (Cap. 336). In addition, 10 indictments were filed pursuant to orders for retrial made by the appellate Courts.

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

- (1) In *HKSAR v Tursen Chris* [2021] HKCFI 3166, the defendant having pleaded guilty to two counts of robbery was committed to the CFI for sentence. On each of the two occasions of the two counts, the defendant wore a black mask and a black short hair wig, entered a shop and pointed a pistol-like object at the head of a female victim-shopkeeper alone in the shop. The defendant then stole from the shop and/or the victim. On each of the two occasions, he tied the victim's wrists and ankles with plastic cable ties. Police investigation succeeded in locating the building in which the defendant resided. Police officers engaged in an ambush operation arrested the defendant when he left his residence and dumped a black rubbish bag, inside which a pistol-like airgun, a wig of short black hair, two packets of plastic cable ties and seven cable ties, etc. were found. Following *Secretary for Justice v Lee Chun Ho Jeef* [2010] 1 HKLRD 84, the judge adopted a starting point of 10 years' imprisonment for each count as a deterrence for robbery with an imitation firearm, reduced it to six years and eight months because of the defendant's guilty pleas and making two years of the second count to run consecutively to the six years and eight months in the first count. The defendant was sentenced to a total term of eight years and eight months.
- (2) In *HKSAR v Kwan Hau-chi Vanessa* [2021] HKCFI 2978, the defendant, a registered medical practitioner, was prosecuted for the manslaughter by gross negligence. The breach of duty involved failing to take reasonable care for the wellbeing, safety and life of a patient in performing a liposuction procedure. After a three-hour procedure, the defendant left the operation room while the patient was still sedated and unconscious and being left solely in the care of medically untrained assistants. Afterwards, when the patient was found unresponsive, a phone call was made to the defendant who then returned to the operation room. When the ambulance men arrived at the centre, no pulse was detected from the patient. Upon

有遵守既定指引，病人便不會死。被告在整個手術中無視生命表徵監察設備發出的警報，而且沒有備存手術前評估或手術全期訪視的記錄、有關麻醉藥的劑量、給藥時間或途徑的詳細記錄，以及生命表徵的書面監察或記錄等。此外，被告也沒有監察病人在手術後的情況。陪審團一致裁定被告罪成，判處監禁六年。（註：本案案發日期為 2014 年 6 月 26 日。《私營醫療機構條例》（第 633 章）於 2018 年 11 月 30 日刊憲，為私營醫療機構引入新規管制度，以保障病人的安全和權益。有四類私營醫療機構須受規管，分別是醫院、日間醫療中心、診所及衛生服務機構。私營醫療機構規管辦公室現正按私營醫療機構的類型及其風險程度分階段落實規管制度。）

分科三第 2 組 — 區域法院法律指引

在 2021 年，區域法院法律指引組的檢控官向執法機關提供合共 1,233 項法律指引，並透過稱為“FAST”的特快法律指引制度處理另外 279 宗案件。設立有關特快制度旨在以更有效的方式，為簡單直接的案件提供法律指引。

該組檢控官提供的法律指引涵蓋罪行類別廣泛，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，以及洗黑錢和各種不誠實罪行等。此外，他們也負責準備案件審前工作、檢控其後的審訊並出席提訊、答辯、判刑、原訟法庭的保釋申請，以及處理上訴和死因研訊。以下是該組在 2021 年處理的一些重要案件：

- (1) 在香港特別行政區 訴 *Liang Yunchao* 及另一人 [2021] HKDC 980 一案，兩名被告企圖利用快艇把價值港幣 730 萬元的雜貨及 12 頭犬隻以海路走私到中國內地。追捕期間，警方船隻被人投擲物件，險象環生。涉案快艇缺乏安全設備，又沒有安裝航行燈，並不適宜行駛。另外，12 頭犬隻缺乏飲用水、活動及休息空間，精神和肉體均受到折磨。兩名被告認罪後被裁定企圖輸出未列艙單貨物、沒有停船、危害他人在海上的安全及殘酷對待動物罪罪名成立，

arriving at the hospital, the patient was soon certified dead. The Prosecution's expert anaesthesiologist opined that the cause of death was over-sedation, respiratory depression, hypoxia and cardiac arrest, and that if the defendant had followed the established guidelines the patient would not have died. The defendant ignored the alarms made by the vital signs monitoring equipment throughout the procedure. There was no record of pre-surgery assessment or peri-operative interview, no detailed records of the dosages, time or route of administration of the anaesthetic drugs, and no written monitoring or record of the vital signs, etc. There was also no post-operative monitoring of the patient. The defendant was convicted by the jury unanimously and was sentenced to six years' imprisonment. (Note: This case happened on 26 June 2014. The Private Healthcare Facilities Ordinance (Cap. 633) has been gazetted on 30 November 2018, and it protects patient safety and rights through the introduction of a new regulatory regime for Private Health Facilities (PHFs). Four types of PHFs are subject to regulation, namely hospitals, day procedure centres, clinics and health services establishments. The Office for Regulation of Private Healthcare Facilities is implementing the regulatory regime in phases based on the types of PHFs and their risk levels.)

Section III(2) – District Court Advisory

In 2021, Public Prosecutors in the District Court Advisory Section rendered a total of 1233 pieces of advice to law enforcement agencies and handled a further 279 cases via a quick advisory system, known as FAST, which was set up to advise on simple and straightforward cases in a more efficient manner.

Apart from giving legal advice on a wide spectrum of offences, ranging from drug trafficking, burglary, robbery, wounding, traffic accidents causing grave consequences, sexual offences, to money laundering and various kinds of dishonesty offences, Public Prosecutors in the Section were also responsible for preparing for and conducting trials, attending hearings for plea days, plea and sentence, bail applications in the CFI as well as for appeals and death inquests. Some significant cases dealt with by the Section in 2021 are as follows:

- (1) *HKSAR v Liang Yunchao and another* [2021] HKDC 980, two defendants attempted to smuggle HK\$7.3 million worth of miscellaneous goods and 12 dogs to Mainland China by sea on a speedboat. Objects were thrown at police vessels during a dangerous pursuit. The speedboat was not suitable for operation due to its lack of safety equipment and navigation

分別被判監共兩年零兩個月及一年零七個月。法庭在判刑時，考慮到企圖輸出未列艙單貨物這罪行的普遍程度，以及近期這罪行為人直接或間接帶來不同性質和程度的利益，根據《有組織及嚴重罪行條例》(第455章)，加重兩名被告有關控罪的刑罰，把二人有關的刑期分別增加三至四個月。

- (2) 在香港特別行政區訴曾裕生及另三人 [2021] HKDC 1593 一案，四名被告被控一項串謀縱火，詳情指他們於2019年10月12日在九龍塘站引爆一枚汽油彈。控方案情指其中兩名被告在車站內放置和點燃汽油彈，另外兩名被告則分別駕駛逃離現場的車輛和提供製造有關汽油彈的所需材料。四名被告中有三人被定罪，其中二人認罪，另外一人則經審訊後被定罪。第一被告因管有五枚汽油彈、11瓶汽油、五支鐵筆、三把錘子、兩把刀及一個載有化學品諾香草胺 (nonivamide) 的金屬罐噴霧器，被加控及定罪管有物品意圖摧毀或損壞財產、管有攻擊性武器及無牌管有槍械。被定罪的被告人分別被判處監禁共52個月、50個月及54個月。此外，法庭對該些被告人發出補償令。



lights. The 12 dogs suffered mentally and physically due to lack of access to water, sufficient space and comfortable resting area. Upon conviction on their guilty pleas to the offences of attempting to export unmanifested cargo, failing to stop, endangering the safety of others at sea and cruelty to animals, the defendants were sentenced to a total term of two years two months' imprisonment and one year seven months' imprisonment respectively, which included an enhanced sentence on the offence of attempting to export unmanifested cargo by three to four months respectively, on the grounds of the prevalence of the offence and also the nature and extent of the total benefit accruing directly or indirectly to any persons from recent occurrences of the offence under the Organized and Serious Crimes Ordinance (Cap. 455).

- (2) *HKSAR v Tsang Yu-sang & 3 others* [2021] HKDC 1593, four defendants were charged with conspiracy to commit arson with intent for setting off a petrol bomb at Kowloon Tong Station on 12 October 2019. It was the prosecution's case that whilst two defendants placed and ignited the bomb at the station, the other two defendants drove a get-away car and supplied the necessary ingredients for the bomb respectively. Three of the defendants were convicted, two on their own pleas and one after trial. The first defendant was additionally charged with and convicted of the offences of possession of articles with intent to destroy or damage property, possession of offensive weapons and possession of arms without a licence for possessing five petrol bombs, 11 bottles of petrol, five crowbars, three hammers, two knives and a spray canister of nonivamide. The convicted defendants were sentenced to a total of 52 months' imprisonment; 50 months' imprisonment and 54 months' imprisonment respectively. A compensation order was also made against them.
- (3) *HKSAR v Kwong Hung-kwong & 2 others* [2021] HKDC 789, three defendants conspired to blackmail a local tycoon of HK\$100 million with a video capturing his wife getting dressed at home, which was taken by one of the defendants who had worked as a security guard for the family. A police decoy disguising as the tycoon's assistant was deployed in a controlled meeting to arrest one of the blackmailers on the spot. Upon their guilty pleas, the defendants were sentenced to a term of imprisonment ranging from two years two months' imprisonment to two years eight months' imprisonment respectively.
- (4) In *HKSAR v Fong Hung-shun* [2021] HKDC 1653, the defendant, an MTR Operation Performance Officer, abused the internal computer system of the MTR Corporation and obtained the personal information of five female passengers who had filed

- (3) 在香港特別行政區 訴 鄭雄光及另二人 [2021] HKDC 789 一案，三名被告人以一段錄像串謀勒索一名本港富商港幣一億元。片段拍攝到富商妻子在家更衣的情況。該錄像由其中一名被告人在任職富商家庭保鏢期間拍攝。警方在一次受監控的會面中設局，派員偽裝成富商的助手，當場拘捕其中一名勒索者。三名被告均承認控罪，各被判處監禁兩年零兩個月至兩年零八個月不等。
- (4) 在香港特別行政區 訴 方雄舜 [2021] HKDC 1653 一案，被告任職港鐵車務表現主任，他濫用港鐵的內部電腦系統，取得五名曾在港鐵站提出投訴的女乘客的個人資料，其中兩名受害人年僅 15 至 16 歲。被告數度聯絡受害人出言恐嚇或假冒警員，威脅和誘使她們發送裸照給他。他又曾經使用一名與他有過節的女同事的個人資料在網上申請貸款。此外，警方從被告其中一部手提電話中檢取多段在公眾地方偷拍得來的裙底錄像。被告承認 11 項罪名，分別三項刑事恐嚇罪、三項假冒公職人員罪、一項企圖欺詐罪、兩項促使未滿 18 歲人士製作色情物品罪和兩項有違公德罪，被判監共四年五個月零四星期。

分科三第 3 組 — 上級法院上訴

該組負責處理所有由區域法院和原訟法庭的檢控所衍生並提交上訴法庭審理的上訴案件（由其他分科處理的商業罪案和公眾秩序罪行的檢控案件除外）。這些案件包括被告就下級法院的定罪及／或刑罰提出的上訴及上訴許可申請。在 2021 年，由被定罪的被告提出的上訴申請有 304 宗，其中 149 宗被駁回，34 宗獲判得直，121 宗由被告放棄上訴。

除了處理被告提出的上訴案件外，該組人員也就下述情況提供法律指引：控方應否根據《區域法院條例》（第 336 章）第 84 條，就區域法院審理並由區域法院法官裁定無罪的個別案件以案件呈述方式提出上訴；以及應否根據《刑事訴訟程序條例》（第 221 章）第 81A 條，就區域法院或原訟法庭所判處的刑罰提出覆核申

incident reports at MTR stations. Two of the victims were even minors at the tender age of 15 to 16. On some occasions, the defendant contacted the victims, threatened and induced them to send him nude photos by making intimidating remarks or by pretending to be a police officer. On another occasion, he sought to obtain a loan by making an online application using the personal particulars of a female colleague against whom he held grudges. Further, upskirt videos taken in public places were retrieved from one of his mobile phones. Upon conviction on his guilty pleas, the defendant was sentenced to a total term of four years five months and four weeks' imprisonment for 11 charges, namely three charges of criminal intimidation, three charges of falsely pretending to be a public officer, one charge of attempted fraud, two charges of procurement of persons under 18 for making pornography and two charges of outraging public decency.

Section III(3) – Higher Court Appeals

This Section is responsible for overseeing all appeal cases heard in the Court of Appeal arising from prosecutions in the District Court and the CFI (other than prosecutions for commercial crimes and public order offences which are handled by the other Sub-divisions). These include appeals and applications for leave to appeal lodged by the defendants against their convictions and/or sentences from the lower Courts. In 2021, 304 appeal applications were brought by the convicted defendants, of which 149 were dismissed, 34 were allowed and 121 were abandoned.

Apart from handling appeals lodged by the defendants, members of this Section also advise on whether or not an appeal should be lodged by the Prosecution in a particular District Court case by way of case stated under section 84 of the District Court Ordinance (Cap. 336) in respect of an acquittal by a District Judge, and whether or not an application for review should be made under section 81A of the Criminal Procedure Ordinance (Cap. 221) in respect of a sentence passed in the District Court or the CFI. Decisions to appeal by way of case stated are taken only after careful consideration of all the circumstances of the case, and only where an acquittal 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, will an appeal by way of case stated be made against the District Judge's order of acquittal. Likewise, decisions to lodge applications for review of sentence under section 81A of the Criminal Procedure Ordinance are only taken after careful consideration of all the circumstances of the case. Such applications will only be made where it is considered that a sentence is wrong in principle and/or manifestly inadequate or excessive.

請。只有經過慎重考慮案件的所有情況後，以及在無罪的裁決涉及法律觀點有錯誤或裁決屬反常（即合理的事實裁斷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就區域法院法官裁定無罪的命令提出上訴。同樣，只有經過慎重考慮案件的所有情況後，在認為刑罰有原則上錯誤及／或明顯不足或過重的情況下，才會決定根據《刑事訴訟程序條例》第 81A 條申請覆核刑罰。

在 2021 年，律政司司長共提出 21 宗覆核刑罰申請，其中七宗已在年內由上訴法庭審理，全部獲得判得直。以下是一些值得注意的案件：

- (1) 在律政司司長訴余俊鑫 [2021] HKCA 1033 一案中，任職警務人員的 32 歲被告被控對六名年齡介乎 11 至 14 歲的女童干犯多項性罪行（包括非法性交及向兒童作出猥褻行為）。部分罪行是對同一受害人重複干犯的，而其中一項罪行在被告保釋期間干犯，構成嚴重的加刑因素。被告認罪，被區域法院法官判處監禁 46 個月。上訴法庭在裁定該宗覆核刑罰申請得直時表示，原審法官判處的 46 個月刑期有原則上錯誤，明顯不足以反映被告的眾多罪行，尤其是被告身為在職警務人員，負責維護法紀，卻知法犯法，因此須加重刑罰。法庭判處被告加刑五年，被告須在原判刑期滿後再入獄服刑。
- (2) 在律政司司長訴吳浩楠 [2022] HKCA 25 一案中，當時任職中學教師的被告因騷擾其兩名男學生被裁定兩項猥褻侵犯罪名成立，被區域法院法官判處社會服務令。上訴法庭裁定覆核其刑罰的申請得直，認為被告所犯的性罪行涉及違反誠信，明顯是嚴重罪行，須判處阻嚇性刑罰。被告經審訊後被判有罪，對所犯罪行毫無悔意，因此判處社會服務令屬原則上錯誤，此刑罰亦明顯不足。法院裁定，適當的刑罰應是即時監禁八個月，即使被告已完成原判的社會服務刑罰，仍須監禁服刑。

如被告在區域法院或原訟法庭獲裁定無罪，該組也可能考慮應否根據《刑事訴訟程序條例》（第 221 章）第 81D 條，就案件中出現的法律問

A total of 21 applications for review of sentence were lodged by the Secretary for Justice in 2021. Seven of those applications had been heard by the Court of Appeal within that year, and the review applications were allowed in all seven cases. Below are some notable cases:

- (1) In *Secretary for Justice v Yu Chun-hing* [2021] HKCA 1033, the 32-year-old defendant, who was a police officer, was charged with multiple sexual offences (including offences of unlawful sexual intercourse and indecent conduct towards child) committed against a total of six girls aged between 11 and 14. Some of the offences were repeatedly committed against the same victim, and one of the offences was committed by the defendant whilst he was on bail, which was a serious aggravating factor. The defendant pleaded guilty to the offences and was sentenced to 46 months' imprisonment by a District Judge. In allowing the application for review of sentence, the Court of Appeal held that the 46-month sentence passed by the Judge was wrong in principle and manifestly inadequate to reflect the multiplicity of the offences. In particular, the Court held that the defendant's offending was aggravated by his position as a serving police officer, when he broke the very laws he was empowered and entrusted to uphold. The Court passed an increased sentence of five years' imprisonment on the defendant, who was required to return to prison having served the previous sentence imposed on him.
- (2) In *Secretary for Justice v Ng Ho-nam* [2022] HKCA 25, the defendant, being a secondary school teacher, was convicted of two charges of indecent assault for having molested two male students of his. He was imposed a community service order by a District Judge. In allowing the application for review of sentence, the Court of Appeal held that the defendant's sexual offences, which involved breaches of trust, were plainly serious offences that required deterrent sentences. A community service order was wrong in principle and was a manifestly inadequate sentence for the defendant, who was found guilty of the offences after a trial and showed no remorse for his offences. The Court held that the appropriate sentence should be one of immediate imprisonment for eight months, which the defendant was required to serve notwithstanding that he had already finished the original sentence of community service.

Where a defendant has been acquitted in the District Court or the CFI, consideration may also be given on whether or not a reference under section 81D of the Criminal Procedure Ordinance (Cap. 221) should be made in respect of a question of law arising in the case, so as to seek the Court of Appeal's opinion on the question which

題向上訴法庭尋求意見。儘管此舉不會影響被告的無罪裁定，但上訴法庭對有關法律問題的意見日後可為下級法院提供指引。該組在 2021 年曾三度請上訴法庭釐清原訟法庭審訊販運危險藥物這嚴重罪行時出現的重大法律問題。該等案件的被告均在原審法官的指引下獲裁定無罪。

該組有時亦要決定控方應否就原訟法庭或上訴法庭的裁決上訴至終審法院。該組人員會審慎處理此等決定，緊記我們在發展香港刑事法學和妥善執行刑事司法方面所擔當的重任。該組亦負責處理由被告提出的上訴和上訴許可申請。在 2021 年，由被告提出的上訴許可申請有 75 宗，只有 10 宗獲批上訴許可，其中五宗被駁回，四宗獲判得直，一宗有待終審法院聆訊。

分科三 — 訟辯

該組的資深首長級人員負責高度敏感案件的檢控工作，舉例如下：

在香港特別行政區 訴 詹心榮 [2021] HKCFI 2518 一案，任職保鏢的被告被控謀殺和射擊其舅父和姨母。被告主動邀約其舅父、姨母和兄長中午飯聚。在其他人不知情的情況下，她身攜一支手槍和 50 發彈藥。午膳後，他們一同前往公園，被告在該處近距離向一名舅父和一名姨母的頭部開槍，殺害他們。她又開槍射擊另一名舅父的側身，子彈穿過該舅父的胸腔，落在第四根肋骨附近。被告也開槍射擊另一名姨母，雖然該名姨母沒有中槍，但其左肩膀有兩處地方被子彈擦傷。被告更一度舉槍指向兄長，但最終沒有開槍。就兩項謀殺罪，辯方提出承認誤殺，理由是被告人神志失常，減輕罪責，但建議遭控方拒絕。被告經審訊後被陪審團裁定兩項謀殺及兩項有意圖而射擊罪罪名成立。就兩項謀殺罪，被告被判處終身監禁；就兩項有意圖射擊罪，被告分別被判處監禁 12 年，其中一項六年的刑期與另一項刑期分期執行。

would provide future guidance on the lower Courts despite that a reference under section 81D does not affect the defendant's acquittal in the case. In 2021, three such references were made for seeking clarification by the Court of Appeal of important questions of law arising from trials in the CFI for serious offences of trafficking in dangerous drugs where the defendants were acquitted upon the trial judges' directions.

At times, decisions have to be made on whether or not appeals to the Court of Final Appeal should be brought by the Prosecution in respect of decisions of the CFI or the Court of Appeal. Members of this Section approach such decisions carefully, 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. The Section also deals with appeals and applications for leave to appeal lodged by the convicted defendants. In 2021, 75 applications for leave to appeal were brought by the convicted defendants to the Court of Final Appeal. Leave to appeal was granted only in 10 cases, of which five were dismissed, four were allowed and one was pending hearing by the Court of Final Appeal.

Sub-division III - Advocacy

Experienced directorate officers in this section are responsible for prosecuting the highly sensitive cases. An example is as follows:-

- (1) In *HKSAR v Tsim Sum-kit, Ada* [2021] HKCFI 2518, the defendant, who was a bodyguard by occupation, was prosecuted for murdering and shooting her uncles and aunts. She initiated a lunch gathering with her uncles, aunts and elder brother. Unbeknown to them, the defendant carried a pistol and 50 rounds of ammunitions. After lunch, they went to a park where the defendant shot at close distance an uncle and an aunt in the head and killed them. She also shot another uncle on his side and the bullet pierced through his thoracic cavity and ended up near his fourth rib. Her shots missed another aunt who sustained two graze wounds on her left shoulder caused by the bullets. The defendant had once pointed the gun at her brother but she did not shoot in the end. The prosecution rejected the defence's offers to plead guilty to manslaughter by reason of diminished responsibility in relation to the two murders. The defendant was convicted after trial by a jury with two counts of murder and two counts of shooting with intent. For the two murders, the defendant was sentenced to life imprisonment. For the two counts of shooting with intent, she was sentenced to 12 years' imprisonment for each count, with 6 years of one count to run consecutively to the other.



分科四 — 商業罪案

Sub-division IV - Commercial Crime

顧名思義，商業罪案分科專門負責通常稱為白領罪行的商業罪案。不過，除商業詐騙、網上欺詐、洗黑錢、稅務詐騙、行賄、貪污、內幕交易，以及《證券及期貨條例》（第 571 章）所訂的其他證券罪行等白領罪行外，分科亦專責處理公職人員行為不當罪行、選舉罪行、《一手住宅物業銷售條例》（第 621 章）所訂罪行，以及《保險業條例》（第 41 章）所訂罪行。

As its name connotes, the Commercial Crime Sub-division specializes in commercial crimes, often referred to as white-collar crimes. However, apart from white-collar crimes such as commercial frauds, online frauds, money laundering, revenue frauds, bribery, corruption, insider dealing and other securities crimes under the Securities and Futures Ordinance (Cap. 571), the Sub-division also specializes in handling the offence of misconduct in public office, electoral crimes, offences under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) and offences under the Insurance Ordinance (Cap. 41).

此等罪案由香港警務處（通常交予其商業罪案調查科或財富情報及調查科負責）、稅務局、廉政公署、證券及期貨事務監察委員會、一手住宅物業銷售監管局及保險業監管局等執法機關負責調查。如適合提出檢控，分科律師會就證據是否充分、適當的控罪和適合的審訊法院，向此等執法機關提供法律指引，並決定是否應就該等案件提出上訴或覆核。律師亦會盡量出庭進行檢控，並處理上訴和覆核案件。

在 2021 年，分科設有五個組別，下文扼述各組別在年內處理的一些值得注意的案件。

分科四第 1 組 — 嚴重詐騙及分科四第 2 組 — 證券、稅務及詐騙

這兩個組別處理商業詐騙、網上欺詐、洗黑錢、《稅務條例》（第 112 章）所訂的稅務罪行、《證券及期貨條例》（第 571 章）所訂的證券罪行、《一手住宅物業銷售條例》（第 621 章）所訂罪行，以及《保險業條例》（第 41 章）所訂罪行。此等罪行或許並非新罪行，但隨着犯案者運用先進科技，加上交易或犯罪活動日益複雜、數量與日俱增，有時甚或跨越國界，要把犯案者繩之於法，倍費神思。

我們從日常工作中注意到各種新興罪案出現，其中涉及加密貨幣和其衍生產品的案件，上升趨勢尤為明顯。

處理此類案件殊不簡單。首先，我們須了解加密貨幣運作所涉及的複雜技術細節，例如加密貨幣屬於何等形式的財產，以及如何收藏、買賣和轉讓。我們往往須憑藉調查人員的知識和技術，搜集相關證據，方可掌握上述各項細節，從而評估提出何等控罪方為適合，故此極為重要。這亦帶出另一困難：就是把原本為常見財產形式而設的現行法例和法律原則應用於此一嶄新財產形式。為此，我們必須先行透澈了解每宗案件的具體案情及法律本身，才可為每宗案件擬定合適的控罪。

儘管遇到上述困難，該兩個組別的律師仍繼續致力打擊此等罪案，以維持香港作為主要國際

These crimes are investigated by law enforcement agencies such as the Hong Kong Police (very often by their Commercial Crime Bureau or Financial Intelligence and Investigation Bureau), Inland Revenue Department, Independent Commission Against Corruption (ICAC), Securities and Futures Commission, Sales of First-hand Residential Properties Authority and Insurance Authority. Counsel advise these law enforcement agencies on the sufficiency of evidence, the proper charges and the appropriate venue for trial, where institution of prosecution is apposite. Counsel also decide on whether an appeal or review should be initiated in those cases. Whenever possible, counsel will prosecute the trials and argue the appeals and reviews.

In 2021, the Sub-division comprises five sections. Highlights of some notable cases handled by each section in 2021 are set out below.

Section IV(1) – Major Fraud and Section IV(2) – Securities, Revenue and Fraud

These two sections dealt with commercial frauds, online frauds, money laundering, revenue crimes under the Inland Revenue Ordinance (Cap. 112), securities crimes under the Securities and Futures Ordinance (Cap. 571), offences under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) and offences under the Insurance Ordinance (Cap. 41). While these offences may not be new crimes, the deployment of technological advancement coupled with an increase in complexity and quantity of transactions or criminal activities by their perpetrators, which may at times transcend national boundaries, makes it more intellectually challenging to bring the perpetrators to justice.

We see in our day-to-day work an emergence of new types of crime, with one noticeable trend being the increase in the number of cases involving cryptocurrency and its derivatives.

When dealing with this type of cases, we face the challenges of first having to understand the technical intricacies of how cryptocurrency operates, such as what form of property it is and how it can be stored, traded and transferred. Very often we have to rely on the investigators' knowledge and know-how in gathering the relevant evidence and presenting us with a clear picture on the above. This is of vital importance as it will facilitate our assessment of the appropriate charges to be laid, which brings to another challenge that we encounter, that is, having to apply the existing law and legal principles which are traditionally developed for application to more conventional forms of property to this new form of property. This will require both a good understanding of the particulars facts of each case as well as the law on our part so that we can suitably formulate the charges to be laid which are appropriate in each case.

金融中心的聲譽。下文扼述有關組別在 2021 年提出檢控的一些個案：

在香港特別行政區 訴 唐智靈 (高院刑事案件 2021 年第 32 號) 一案中，被告被控六項盜竊罪。被告是板前壽司前會計部經理，職責包括每天從各分店收集現金，並把款項存入板前壽司的銀行帳戶。在 2007 年年中，被告未有把相關的會計文件交予核數師審閱。在 2007 年 9 月，板前壽司董事到被告的辦公室尋找被告不果。被告被發現在 2005 至 2007 年期間，從板前壽司偷取合共約港幣 2,420 萬元。為隱瞞盜竊罪行，被告偽造銀行入數紙，一方面把偷取的款額視作公司開支，另一方面把入數紙充當已將各分店的現款存入板前壽司銀行帳戶的證明。警方在 2019 年 3 月接獲舉報，遂通緝被告並將他列入目標名單。被告其後在 2019 年 7 月 17 日準備經羅湖管制站離港時被捕。被告在警誡下承認控罪，並表示已把所有贓款花在賭博上。被告承認全部控罪，在 2021 年 6 月 29 日被判監禁六年零八個月。

在香港特別行政區 訴 Leung Moon-cheung (東區裁判法院刑事案件 2021 年第 1303 號) 一案中，被告向政府的“零售業資助計劃”申請一次過港幣 80,000 元的資助，但被拒絕。該計劃在“防疫抗疫基金”下推出，旨在資助經營零售業務的實體商店。警方的調查發現，該申請涉及使用虛假證明文件。被告就“企圖欺詐”罪接受審訊時，聲稱對該申請並不知情，懷疑該申請由其員工提出。他也聲稱雖經營“電業工程業務”，但同時經營“樓上”服裝零售店。法院不相信該申請由其他人提出，經審訊和考慮相關案情後，包括該申請列明以被告的個人銀行帳戶為收取資助的帳戶，裁定被告罪名成立。法院又指即使“樓上”零售店屬實，也不可能是被告的主要業務，最終判他監禁九個月。



Despite these challenges, counsel in these two sections strive to continue to combat those crimes in order to maintain Hong Kong's reputation as one of the leading international financial centres. Cases prosecuted in 2021 include:

In *HKSAR v Tong Chi-ling Eric* HCCC 32/2021, the defendant was charged with six counts of theft. The defendant was a former accounting manager of "Itamae Sushi". The defendant's duties included collecting the daily cash from each of the branches and depositing monies into the bank accounts of Itamae Sushi. In mid 2007, the defendant failed to provide the relevant accounting documents for inspection by the auditor. In September 2007, the director of Itamae Sushi went to look for the defendant at his office who however became out of reach. It was found out that the defendant had stolen a total sum of around HK\$24.2 million from Itamae Sushi between 2005 and 2007. In order to conceal the theft, the defendant had forged bank-in slips by treating the stolen amounts as the expenses of the company and to purportedly show that the cash collected from the branches was deposited into the bank accounts of Itamae Sushi. A report was made to the Police in March 2019. The defendant was put on the wanted and watch lists. The defendant was subsequently arrested on 17 July 2019 when he was about to leave Hong Kong via the Lo Wu Control Point. The defendant admitted the offences under caution and stated that he had spent all the stolen money on gambling. The defendant pleaded guilty to all the charges. On 29 June 2021, the defendant was sentenced to six years and eight months' imprisonment.

In *HKSAR v Leung Moon-cheung* ESCC 1303/2021, the defendant applied for a one-off subsidy of HK\$80,000 with the Government's Retail Sector Subsidy Scheme under the Anti-epidemic Fund, which aimed at subsidizing retail businesses run in physical shops. His application was rejected. On investigation by the Police, it was found that false supporting documents were used in the application. In the trial of "attempted fraud", the defendant alleged he had no knowledge about the application and he suspected the application was submitted by his staff. He also alleged he was operating an "upstairs" retail shop selling clothes, although he was also engaging in "electrical project business" at the same time. The defendant was convicted after trial. The Court disbelieved the application was submitted by the others. The Court considered the circumstances of the case, including the fact that the personal bank account of the defendant was stated in the application as the recipient account of the subsidy. The Court also noted even if the "upstairs" retail shop was true, it could not be the main business of the defendant. The defendant was sentenced to nine months' imprisonment.

分科四第 3 組 — 廉政公署 (公營機構)

公務員及公職人員因其角色及獲賦權力，履行公職須廉潔奉公，守正忠誠。廉政公署 (公營機構) 組負責就公職人員刑事不當行為的相關事宜，向廉政公署及其他政府部門及決策局提供意見。為保障和維護公職人員的誠信，該組就有證據支持而且提出檢控符合公眾利益的案件提出檢控。下文扼述該組在 2021 年提出檢控的一些案件：

在香港特別行政區 訴 龍少泉 (區院刑事案件 2021 年第 410 號) 一案中，一名警司訛稱所購買的單位由家人使用，隱瞞單位實質租予他人，欺騙政府及銀行向其批出購屋和按揭貸款共約港幣 600 萬元。根據《盜竊罪條例》(第 210 章) 第 16A 條被控兩項欺詐罪，經審訊後被裁定罪名成立，判監 18 個月；

在香港特別行政區 訴 陳玉娟 (西九龍裁判法院刑事案件 2020 年第 3134 號) 一案中，一名女子為處理兒子的身分證申請和加快她的公屋申請，向入境事務處、房屋署及社會福利署人員提供合共超過港幣 3,000 元。她被裁定三項向公職人員提供利益罪罪成，違反《防止賄賂條例》(第 201 章) 第 4 條，判監 12 個星期；

在香港特別行政區 訴 黃世雄 (粉嶺裁判法院刑事案件 2021 年第 1088 號) 一案中，一名警長接受同事的非法貸款合共港幣 216,000 元 (港幣 55,000 元由七名下屬提供，其餘港幣 161,000 元由一名警員提供)。他沒有向下屬還款，只向警員償還港幣 49,500 元。他承認 11 項訂明人員接受利益罪，違反《防止賄賂條例》第 3 條，判監四個月；

在香港特別行政區 訴 許紹基 (東區裁判法院刑事案件 2021 年第 2339 號) 一案中，一名郵差以內部文件欺騙香港郵政，偽稱沒有從事外間工作，實質於前僱主的健身集團工作九個月。他承認兩項代理人意圖欺騙其主事人而使用文件罪，違反《防止賄賂條例》第 9(3) 條，判處 120 小時社會服務令。

Section IV(3) – ICAC (Public Sector)

Civil servants and public officers, because of the role they play and the powers with which they are entrusted, are required to discharge their public duties free of bribery and with integrity and fidelity. ICAC (Public Sector) Section is responsible for advising ICAC and other government departments and bureaux on matters relating to criminal misconduct by persons exercising public functions. To protect and uphold the integrity of our public service, prosecutions were instituted for cases which were supported by evidence and in the public interest to proceed. Cases prosecuted in 2021 include:

In *HKSAR v Lung Siu-chuen* DCCC 410/2021, a Superintendent of the Police deceived the Government and a bank into granting him housing and mortgage loans totaling about HK\$6 million by falsely representing that a flat he purchased would be used by his family when in fact it would be let to others. He was convicted after trial of two charges of fraud under section 16A of the Theft Ordinance (Cap. 210) and was sentenced to 18 months' imprisonment;

In *HKSAR v Chan Yujian* WKCC 3134/2020, a woman offered a total of over HK\$3,000 to officers of the Immigration Department, Housing Department and Social Welfare Department for processing her son's application for an identity card and expediting her application for public housing. She was convicted of three charges of offering an advantage to a public servant, contrary to section 4 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") and sentenced to 12 weeks' imprisonment;

In *HKSAR v Wong Sai-hung* FLCC 1088/2021, a police sergeant accepted unauthorized loans totaling HK\$216,000 from his colleagues (HK\$55,000 from seven subordinates and HK\$161,000 from a police constable). He made no repayment to his subordinates and only repaid HK\$49,500 to the police constable. He was sentenced to four months' imprisonment after pleading guilty to 11 charges of prescribed officer accepting an advantage, contrary to section 3 of the POBO.

In *HKSAR v Hui Siu-kei* ESCC 2339/2021, a Postman used internal documents to deceive the Hong Kong Post by falsely stating that he had not engaged in outside work when in fact he had worked at his former employer's fitness group for nine months. He pleaded guilty to two charges of agent using document with intent to deceive his principal, contrary to section 9(3) of the POBO and was sentenced to a community service order of 120 hours.

In *HKSAR v Li Kai-tik* KCCC 3491/2021, a Field Officer of the Agriculture, Fisheries and Conservation Department used false

在香港特別行政區 訴 李啟迪 (九龍城裁判法院 刑事案件 2021 年第 3491 號) 一案中，漁農自然護理署 (漁護署) 一名農林督察處理四宗流浪狗個案時使用虛假內部文件，誤導漁護署指主要證人不會協助檢控。該人員承認八項《防止賄賂條例》第 9(3) 條下使用虛假文件誤導其主事人的控罪，被裁定罪名成立，判處 160 小時社會服務令。

除處理公職人員刑事不當行為的案件外，廉政公署 (公營機構) 組亦負責選舉罪行的檢控工作。

在 2021 年，《選舉 (舞弊及非法行為) 條例》(第 554 章) 加入了兩項新罪行，分別是在選舉期間內藉公開活動煽惑另一人不投票、投白票或無效票，以及故意妨礙或阻止另一人投票，以規管操縱或破壞選舉的行為。自此該組一直與廉政公署緊密合作，處理執行新選舉法例的事宜。

另須注意一點，原訟法庭在 2021 年 10 月在一宗裁判法院上訴案 (高院裁判法院上訴 2021 年第 294 號) 中表明，就沒有根據選舉法例規定提交選舉申報書的罪行判處扣押刑罰，實屬恰當。法庭裁定案中上訴人 (在區議會選舉落敗的候選人) 的適當刑罰為監禁四個月。

分科四第 4 組 — 廉政公署 (私營機構)

對廉政公署 (私營機構) 組來說，2021 年依然充滿挑戰。該組的律師主要負責就私營機構 (包括物業管理行業、建造業、金融和保險機構、上市公司) 的貪污案件向廉政公署提供法律指引，以確保調查所得的證據足以支持檢控。此外，該組律師亦就貪污及其他案件作出檢控和上訴。

在 2021 年檢控的私營機構貪污案件中，以下案件重要且值得注意：

在香港特別行政區 訴 蘇錦威 (第一被告) 及蘇潤餘 (第二被告) (區院刑事案件 2018 年第 415 號) [2021] HKDC 393 一案中，第一和第二被告在一家律師事務所分別任職法律文員和法律行政人員。第一被告處理一宗購買私人住宅物

internal documents in relation to four stray dog cases and misled his department that the key witnesses would not assist the Prosecution. The officer was convicted upon his own plea of eight charges of using false documents to mislead principal under section 9(3) of the POBO and was sentenced to 160 hours of Community Service.

Apart from handling cases of criminal misconduct by public officers, ICAC (Public Sector) Section is also responsible for the prosecution of electoral offences.

With the introduction of two new offences under the Elections (Corrupt & Illegal Conduct) Ordinance (Cap. 554) to regulate acts that manipulate or undermine elections in 2021, the Section worked closely with the ICAC on matters relating to the enforcement of the new electoral laws (namely, the offences of inciting another not to vote, to cast a blank or invalid vote by way of public activity during an election period and wilfully obstructing or preventing another from voting).

It is pertinent to note that the Court of First Instance made it clear in a magistracy appeal (HCMA 294/2021) in October 2021 that it would be appropriate to impose a custodial sentence for the offence of failing to lodge an election return as required under the electoral laws. The Court held that the appropriate sentence to be imposed on the appellant (a defeated candidate of the District Council Election) in that case was four months' imprisonment.

Section IV(4) – ICAC (Private Sector)

The year of 2021 continued to be a challenging year for the ICAC (Private Sector) Section. Counsel in the section are mainly responsible for giving advice to the ICAC on cases related to corruption in the private sector, which include the building management industry, construction industry, financial and insurance institutions as well as listed companies. Legal advice is provided to the ICAC to ensure that the evidence gathered during investigation is sufficient to support the prosecution of corruption cases. Apart from giving legal advice, counsel in the section also prosecute trials and appeals concerning corruption and other cases.

Amongst the private sector corruption cases prosecuted in 2021, the following are of interest and significance:

In *HKSAR v Kevin So Kam-wai (D1) and Jacky So Yun-yue (D2)* DCCC 415/2018, [2021] HKDC 393, D1 and D2 were respectively legal clerk and legal executive of a solicitors' firm. D1 handled the purchase of a private residential property by a limited company controlled by a married couple. After the transaction was completed, D1 falsely represented to a licensed money lender (L1) that he was authorized



業的交易，買家為一家有限公司（由一對夫婦控制）。交易完成後，第一被告向持牌放債人（第一放債人）偽稱獲物業擁有人授權處理港幣 1,000 萬元的按揭貸款申請。貸款申請獲正式批准，港幣 1,000 萬元貸款存入由第二被告控制的一家離岸公司的銀行帳戶，超過港幣 710 萬元轉入第一被告的銀行帳戶。由於拖欠還款，第一放債人向物業擁有人和其丈夫等提出民事申索。第一被告利用兩封據稱由物業擁有人和其丈夫簽發的信函，指示另一家律師事務所（第一被告當時的僱主）在該宗民事申索中代表物業擁有人和其丈夫行事。同時，第一被告再次向另一持牌放債人（第二放債人）偽稱物業擁有人已授權他處理另一宗港幣 1,000 萬元的按揭貸款申請。有關貸款獲正式批准，並用以償還第一放債人的貸款。物業擁有人從未指示任何人獲取該兩筆合共港幣 2,000 萬元的貸款。第一被告被裁定兩項欺詐罪名和一項使用虛假文書的副本罪名成立，又與第二被告共同被裁定處理已知道或相信為代表從可公訴罪行的得益的財產罪名成立。第一和第二被告分別被判處監禁 47 個月和 30 個月。兩名被告已就定罪和刑罰提出上訴通知，而律政司司長已申請覆核第一被告的刑罰。

在 *HKSAR v Leung Chun-hei* (區院刑事案件 2021 年第 361 號) [2021] HKDC 1249 一案中，被告是一家照明產品公司的高級銷售經理，負責處理客戶訂單，其中包括其妻子為唯一股東兼董事的貿易公司 (X 公司)。被告獲授權動用客戶促銷資金補貼 X 或給予 X 折扣。X 在 34 個月間共下了約 3,800 份採購訂單，發票總額約港幣 1.07 億元，促銷資金共撥出約港幣 1,200 萬

by the property owner to handle a mortgage loan application of HK\$10 million. The loan application was duly approved and the loan of HK\$10 million was paid into the bank account of an offshore company controlled by D2. Over HK\$7.1 million was transferred to D1's bank account. As the repayments of the loan ran into arrears, L1 instituted a civil claim against, inter alia, the property owner and the husband. D1 used two letters purportedly issued by the property owner and the husband to instruct another solicitors' firm (D1's then employer) to act for the property owner and the husband in the civil claim. Meanwhile, D1 again falsely represented to another licensed money lender (L2) that the property owner had authorized him to handle another mortgage loan application of HK\$10 million. The loan was duly approved and was applied to repay the loan owed to L1. The property owner never instructed anyone to obtain the two loans totaling HK\$20 million. D1 was convicted of two charges of fraud and one charge of using copies of false instruments, and was further found guilty jointly with D2 of dealing with property known or believed to represent proceeds of an indictable offence. D1 and D2 were respectively sentenced to 47 months' and 30 months' imprisonment. Both defendants have filed notices of appeal against conviction and sentence while the Secretary for Justice has filed an application to review D1's sentence.

In *HKSAR v Leung Chun-hei* DCCC 361/2021, [2021] HKDC 1249, the defendant was a senior sales manager of a lighting product company and was responsible for handling orders placed by customers including company X, a trading company in which his wife was the sole shareholder-cum-director. The defendant was authorized to utilize promotion funds for clients to subsidize or give discount to X. Over a period of 34 months, X had placed about 3,800 purchase orders for total invoiced amount of about HK\$107 million and a total sum of about HK\$12 million from the promotion funds was used to subsidize X. The defendant was fully aware that he should promptly disclose any actual or potential conflict of interest to the company but he never made any declaration to the company about his wife's

元補貼 X。被告明知應及時向公司披露任何實際或潛在的利益衝突，但從未向公司申報其妻子在 X 的角色和利益。被告承認一項欺詐罪。法院表示被告故意且有預謀欺騙公司，其行為違反誠信，與盜竊無異，判處被告監禁 56 個月。被告已就刑罰提出上訴通知。

在香港特別行政區 訴 麥光耀 (第一被告) 及另三人 (第二至第四被告) (區院刑事案件 2019 年第 657 號) [2021] HKDC 1370 一案中，四名被告被裁定一項串謀詐騙罪罪名成立，而第一、第三和第四被告更被裁定另一項類似罪名成立。康宏理財控股有限公司 (康宏控股) 為上市公司。鼎成證券有限公司 (鼎成) 和康宏證券投資服務有限公司 (康宏證券) 均提供屬受規管活動的證券交易服務，例如債券配售。第一被告和康宏控股另外兩名執行董事持有大量康宏證券的股份。康宏控股在年報披露康宏證券是其有關連人士。康宏控股在六個月內四度委聘鼎成為四次債券配售的配售代理。其間，被告一同串謀安排鼎成委聘康宏證券為四次債券配售的分配售代理。根據分配售安排，康宏證券其後經鼎成向康宏控股收取約港幣 4,960 萬元的分配售佣金，以及從鼎成獲取港幣 120 萬元的獎金。實際上，鼎成沒有向任何投資者配售債券，康宏證券才是實際配售代理。康宏控股、其董事局和股東，以及香港聯合交易所從未獲披露康宏證券為四次債券配售的實際配售代理。第一被告被判處監禁七個月，第四被告鼎成總經理被判處監禁五個月。第二被告康宏控股的財務總監和第三被告康宏控股的經理，分別判處監禁五個月及四個月，緩刑 18 個月。所有被告已就定罪提出上訴通知，而律政司司長已申請覆核刑罰。

在香港特別行政區 訴 方錦榮 (區院刑事案件 2020 年第 810 號) [2021] HKDC 1409 一案中，被告是中小企業香港樂天國際貿易有限公司 (樂天) 的唯一董事及股東，為了向兩家銀行申請融資服務，提交據稱由會計師行發出的樂天審計報告和財務報表副本，以及虛假的公司銀行帳戶月結單副本，作為證明。兩家銀行向樂天批出港幣 1,300 萬元及港幣 600 萬元的融資額，並會根據周年覆核的評估結果，決定會否延長、暫停或終止融資安排。周年覆核期間，被告再次提交虛假的公司審計報告、財務報表及銀行帳戶月結單副本，兩項融資因而獲准延期。被

role and interest in X. The defendant pleaded guilty to one count of fraud. In sentencing the defendant to 56 months' imprisonment, the Court said that the defendant had intentionally and premeditatedly deceived the company. His acts constituted a breach of trust and were no different from theft. The defendant has filed a notice of appeal against sentence.

In *HKSAR v Mak Kwong-yiu (D1) and three others (D2-D4)* DCCC 657/2019, [2021] HKDC 1370, the four defendants were convicted of one charge of conspiracy to defraud while D1, D3 and D4 were further found guilty of another similar offence. CFH was a publicly listed company. GS and CIS both provided dealing in securities regulated activity, such as bonds placement. D1 and two other executive directors of CFH held substantial shares in CIS. CFH's annual report disclosed that CIS was its connected person. On four occasions over a period of six months, CFH engaged GS as the placing agent of four bond placing exercises. The defendants conspired together to arrange GS to further engage CIS as the sub-placing agent of the four exercises. CIS subsequently received around HK\$49.6 million as sub-placing commission from CFH via GS and HK\$1.2 million as bonus from GS under the sub-placing arrangements. In fact, GS did not place any bonds with any investor and CIS was the actual placing agent. It was never disclosed to CFH and its board of directors and shareholders as well as the SEHK that CIS was the actual placing agent of the four bond placing exercises. D1 was sentenced to seven months' imprisonment while D4, general manager of GS was sentenced to five months' imprisonment. D2 and D3, financial controller and manager respectively of CFH were sentenced to five months' and four months' imprisonment respectively, both suspended for 18 months. All defendants have filed notices of appeal against conviction while the Secretary for Justice has filed notices of application for review of sentences.

In *HKSAR v Fong Kam-sang* DCCC 810/2020, [2021] HKDC 1409, the defendant was the sole director and shareholder of a small and medium enterprise (HKLIT) which applied for banking facilities from two banks. In order to support the applications, the defendant submitted to the two banks copies of audited reports and financial statements of HKLIT purportedly issued by an accounting firm, and copies of false bank statements of the company. The banks granted banking facilities of HK\$13 million and HK\$6 million to HKLIT which were subject to annual reviews in order to assess if the banking facilities would be extended, suspended or revoked. At the annual reviews, the defendant again submitted copies of false audited reports, financial statements and bank statements of the company. As a result, extension of the two banking facilities were approved. The defendant was convicted of five charges of using copies of false instruments and was sentenced to six years' imprisonment. The defendant has filed notices of appeal against conviction and sentence.

告被裁定五項使用虛假文書的副本罪名成立，判處監禁六年。被告已就定罪和刑罰提出上訴通知。

分科四（訟辯）——訟辯組

該組律師主要負責出庭進行檢控和處理上訴，所處理的案件往往重大而複雜。他們也在可行情況下就該分科負責的案件協助提供法律指引。下文扼述該組在 2021 年提出檢控的一些案件：

在香港特別行政區 訴 林卓廷（東區裁判法院刑事案件 2020 年第 2789 號）一案中，被告被裁定三項披露受調查人身分罪罪成，違反《防止賄賂條例》第 30 條。在 2019 年 7 月及 10 月，廉政公署人員就 2019 年 7 月 21 日在元朗港鐵站聲稱發生的襲擊人羣案件與身為證人的被告會面。廉政公署人員告知被告該署調查涉事警方指揮官一事，並提醒他上述《防止賄賂條例》第 30 條的禁令。

在 2019 年 12 月 29 日及 2020 年 1 月 21 日，被告舉行記者會，過程在他和民主黨的 Facebook 專頁直播，其間披露上述正被調查的一名受調查人的身分，又於 2020 年 7 月 16 日在立法會綜合大樓會見傳媒時作出相若的披露。被告經審訊後被裁定全部控罪罪名成立，就控罪各判處監禁四個月，同期執行。他獲准保釋等候上訴。

在香港特別行政區 訴 劉文建 [2021] HKCFI 3078 一案中，上訴人是應用科技研究院研究及發展總監，據稱他代表該研究院批准向供應商採購總值逾 50 萬元的物品時，沒有披露他與妻子持有供應商的利益。他經原審裁判官審訊後，被裁定普通法公職人員行為不當罪名成立，判處監禁六個月，緩刑 30 個月。上訴人就定罪提出上訴，申訴指原審裁判官 (i) 沒有對上訴人在警誡會面作出的開脫罪責部分內容給予任何比重，實屬犯錯；(ii) 沒有充分考慮罪行的犯罪意圖元素及上訴人的良好品格；以及 (iii) 錯誤裁斷其行為屬嚴重不當行為。法庭駁回上訴人所有上訴理據。

Section IV (Adv) – Advocacy

Counsel in this section mainly prosecutes trials and appeals in court, very often significant and complex ones. At the same time, they assist in giving legal advice, whenever possible, on cases that fall within the Sub-division's purview. Cases prosecuted in 2021 include:

In *HKSAR v Lam Cheuk-ting* ESCC 2789 of 2020, the defendant was convicted of three charges of disclosing of identity of persons being investigated, contrary to section 30 of the POBO. In July and October 2019, officers of the ICAC interviewed the defendant as a witness in respect of case of alleged attack of persons at Yuen Long MTR station on 21 July 2019. The defendant was informed by ICAC of their investigation against the Police commanders in the matter and was warned of the prohibition under the said section 30 of the POBO.

On 29 December 2019 and 21 January 2020, the defendant held a press conference (live-streamed on the Facebook pages of himself and of the Democratic Party) during which he disclosed the identity of a subject person of the said ongoing investigation. On 16 July 2020, he made a similar disclosure during a media standup at the Legislative Council Complex. The defendant was convicted of all charges after trial and was sentenced to a concurrent sentence of four months' imprisonment. He was granted bail pending appeal.

In *HKSAR v Lau Man-kit* [2021] HKCFI 3078, the appellant, the research and development director of the Applied Science and Technology Research Institute, was convicted after trial of the common law offence of misconduct in public office. It was alleged that he had failed to disclose the interests of himself and his wife in the vendors when he endorsed over half of million dollars' worth of purchases from the vendors on behalf the said institute. Upon conviction, he was sentenced to six months' imprisonment suspended for 30 months. In appealing against his conviction, the appellant complained that the trial magistrate (i) erred in placing no weight in the exculpatory part of his cautioned interview; (ii) failed to properly consider the *mens rea* element of the offence and the good character of the appellant; and (iii) erred in finding his conduct to be serious misconduct. The Court dismissed all the appellant's grounds of appeal.



特別職務 Special Duties

由 2019 年社會事件而起的案件規模之大、歷時之久和數量之多，均是前所未有的，為刑事檢控科帶來巨大挑戰。為應對如此嚴峻的情況，刑事檢控科在 2020 年 4 月中成立特別職務組。五名首長級人員、三名高級檢控官和九名檢控官被調派特別職務組，以應付歷來罕見的案件量。特別職務組由副刑事檢控專員周天行先生掌管。

The scale, duration and volume of the cases arising from the 2019 social turmoil are unprecedented and posed huge challenges to the Prosecution. To tackle the dire situation, a Special Duties (SD) Team has been set up in the Prosecutions Division in mid-April 2020. Five directorate officers, three Senior Public Prosecutors and nine Public Prosecutors have been deployed to the SD Team to cope with the record high caseload handled by the team. The SD Team is headed by Mr Anthony Chau, Deputy Director of Public Prosecutions.

特別職務組專責檢控各種公眾秩序相關罪行，包括暴動、非法集結、管有炸藥、縱火、有意圖而傷人和管有攻擊性武器等。一般公眾秩序罪行可涉及大量被捕人，證據和資料繁多，包括各種錄影片段。部分大型事件的涉案疑犯更可多達數百人。在提供法律意見前，特別職務組律師必先審查和分析所有相關證據（尤其是大量現場錄影片段），甚為費時。這些案件往往性質嚴重且受到公眾關注，特別職務組律師必須在緊迫時間內周詳思慮和準確擷取每名被捕人的案情證據，才可適時向法院提出控罪。當中涉及無數法律問題，有時關乎人權和《基本法》，特別職務組律師因此須進行廣泛法律研究和給予大量法律意見。

特別職務組律師不僅負責提供法律意見，還負責代表檢控方處理審訊和上訴聆訊，以及出席其他不同類型的相關聆訊。以下是特別職務組律師在 2021 年處理的一些具重要性的案件：

- (i) 在香港特別行政區 訴 盧建民及香港特別行政區 訴 湯偉雄 (2021) 24 HKCFAR 302 案中，終審法院闡明《公安條例》(第 245 章) 第 18 及 19 條下“非法集結”罪和“暴動”罪的控罪元素，並裁定該兩項罪行均屬參與性質，控方無須證明額外的共同目的（即使參與者參與非法集結或暴動的額外意圖）。法院亦裁定，就該兩項罪行而言，基本形式的共同犯罪計劃既非必要，亦不適用，因為這會不必要地增加控方的舉證責任，並可能使陪審團出現混淆。
- (ii) 在香港特別行政區 訴 陳俊傑 (終審法院刑事上訴案件 2022 年第 1 號) 案中，終審法院就《簡易程序治罪條例》第 17 條下“管有適合作非法用途的工具”罪，裁定條文中“其他適合作非法用途的工具”的表述需受同類原則約束，即其含義需與“撬棍、撬鎖工具、百合匙”等條文列出的物品作同類詮釋，而被詮釋為“適合作非法進入的工具”。就此罪行的犯意，終審法院亦裁定“作任何非法用途使用”的相關意圖需對應該物件或工具的種類。

The SD Team specializes in the prosecution of a wide variety of public order related offences, including riot, unlawful assembly, possession of explosives, arson, wounding with intent and possession of offensive weapons. A typical public order offence may involve a large number of arrested persons with voluminous evidence and materials, including various kinds of video footages. For some large-scale incidents, the number of suspects can go up to the hundreds. Much time has to be spent on reviewing and analysing all relevant evidence in particular the vast amount of video footages capturing the scene before legal advice can be provided. These cases are often serious in nature and attract public attention, calling for detailed consideration and clear distillation of factual evidence in respect of each arrested person under a pressing timeframe as charges must be laid in court in a timely manner. A myriad of legal issues, sometimes relating to human rights and the Basic Law, are involved and hence extensive legal research and input from counsel of the SD Team are required.

Counsel in the SD Team are responsible for, not only giving legal advice, but also prosecuting trials and appeals, and attending different types of related hearings. The following are some notable cases handled by counsel of the SD Team in 2021:

- (i) In *HKSAR v Lo Kin-man and HKSAR v Tong Wai-hung* (2021) 24 HKCFAR 302, the CFA elucidated the elements of “unlawful assembly” and “riot” under sections 18 and 19 of the Public Order Ordinance (Cap. 245) and held that both offences are participatory in nature and there is no requirement for the Prosecution to prove any extraneous common purpose, i.e. an external objective motivating the participants in unlawful assembly or riot. The Court further held that basic form of joint enterprise is found to be unnecessary and not applicable, for it would add unwarranted burden on the Prosecution and cause possible confusion to jury.
- (ii) In *HKSAR v Chan Chun-kit* FACC 1/2022, in the context of the offence of “possession of an instrument fit for unlawful purposes” under section 17 of the Summary Offences Ordinance (Cap. 228), the CFA held that to properly reflect the legislative intent of the offence provision, the phrase “other instrument fit for unlawful purposes” should be read *ejusdem generis* with the preceding words “any crowbar, picklock, skeleton-key”, to restrict its meaning to refer to instruments that are fit for gaining unlawful access. As regards the *mens rea* requirement, it was held that the intended unlawful purpose must correspond to the category of the articles or instruments.

- (iii) 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，上訴人是一名社工。他在 2019 年 7 月 27 日元朗的非法集結期間站在警方防線前方，阻礙警方向前推進以驅散示威者。法院在聆訊上訴時闡釋“阻撓警務人員”罪的相關法律和元素，並裁定案發時上訴人的行為構成故意阻撓在正當執行職務的警務人員。
- (iv) 在香港特別行政區 訴 盧佩瑤 [2021] 4 HKLRD 868 一案中，上訴人和另外五人在 2019 年 11 月 11 日把竹枝擲在鐵路路軌上。她被裁定“抗拒在正當執行職務的警務人員”和“危害他人的安全”罪罪成，判處監禁八個月。法院駁回她就刑罰提出的上訴時強調，訂立“危害他人的安全”罪旨在確保鐵路運作暢順和使用者安全。為免他人仿效，刑罰必須具有阻嚇力。法院亦在判決中羅列該罪行的量刑因素。
- (v) 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。在律政司司長 訴 周建諾 (覆核申請 2021 年第 1 號) 一案中，答辯人在 2020 年 5 月 13 日沙田某商場的未經批准集結中破壞一間茶飲店。上訴法庭批准控方的覆核刑罰申請，裁定律政司司長 訴 黃之鋒 [2018] 2 HKLRD 657 一案所列明關於非法集結的量刑原則適用於任何擾亂公眾秩序的罪行。在這類案件中，懲罰與阻嚇是重要的量刑考慮因素。法庭進一步裁定，針對特定背景或立場店舖的刑事損壞行為帶有“仇視、霸凌、恫嚇和滅聲”的特徵及效果，應予以阻嚇。法庭撤銷原有的社會服務令，答辯人被判入更生中心。
- (vi) 在律政司司長 訴 朱沛恒 [2021] 5 HKLRD 812 一案中，答辯人與其他示威者在 2019 年 7 月 22 日破壞位於商場內的立法會議員辦事處。答辯人被裁定“刑事損壞”罪罪成，被判處感化令。其後控方提出覆核，裁判官改判 200 小時社會服務令。上訴法庭裁定答辯人有預謀犯案，其行為有極高風險煽惑更多和更廣泛的刑事作為。
- (iii) In *HKSAR v Lau Ka-tung* HCMA137/2020, on 27 July 2019, the appellant, a social worker, stood in front of the police check line during an unlawful assembly in Yuen Long and obstructed the Police from marching forward to disperse protestors. On appeal, the Court explicated the laws and elements of the offence of “obstructing a police officer” and held that the appellant’s conduct amounted to wilful obstruction of police officers in due execution at the material time.
- (iv) In *HKSAR v Lo Pui-yiu* [2021] 4 HKLRD 868, on 11 November 2019, the appellant and five other persons, threw bamboo sticks onto railway tracks. She was convicted of “resisting a police officer in the due execution of his duty” and “endangering the safety of others”, and was sentenced to eight months’ imprisonment. In dismissing her appeal against sentence, the Court stressed that the objective of the offence of “endangering the safety of others” is to ensure the smooth operation of the railway and the safety of railway users, and sentence must have deterrence effect in order to prevent people from following suit. In its judgment, the Court also laid down a list of factors relevant to the sentencing of the offence.
- (v) 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). In *Secretary for Justice v Chow Kin-nok* CAAR 1/2021, on 13 May 2020, the respondent damaged a tea shop in an unauthorized assembly in a shopping mall in Shatin. In allowing the Prosecution’s application for review of sentence, the Court of Appeal held that the sentencing principles set out in *SJ v Wong Chi-fung* [2018] 2 HKLRD 657 concerning unlawful assembly are also applicable to any offences that disturb public order. Punishment and deterrence would be important considerations in sentencing these cases. The Court further held that the acts of criminal damage that target shops with a certain background or stance have characteristics and effects of “hate, bullying, intimidation and silencing” and should be deterred. The original community service order was quashed and the respondent was sentenced to rehabilitation centre.
- (vi) In *Secretary for Justice v Chu Anson Pui-hang* [2021] 5 HKLRD 812, on 22 July 2019, the respondent damaged the office of Legislative Council Member at a shopping mall together with other protestors. The respondent was convicted of “criminal damage” and was initially sentenced to a probation order, which was subsequently substituted by a 200 hours’ community service order by the magistrate upon a review initiated by the Prosecution. The Court of Appeal held that the respondent had committed the offence with premeditation

法庭撤銷原來的社會服務令，把答辯人判入教導所。

- (vii) 在律政司司長 訴 陳業云 (覆核申請 2021 年第 5 號) 一案中，答辯人在 2020 年 1 月 1 日於暴動現場附近向一輛人羣管理特別用途車投擲磚塊，以及被發現管有用作損壞財產的工具。被告被裁定“刑事損壞”及“管有物品意圖損壞財產”罪罪成，判處 18 個月感化令。控方申請覆核刑罰，上訴法庭撤銷原來刑罰，改判答辯人於勞教中心羈留，以恰當反映罪行的嚴重性。
- (viii) 在香港特別行政區 訴 潘榕偉 (覆核申請 2020 年第 16 號) 一案中，答辯人在 2019 年 9 月於 Facebook 群組發布帖文，呼籲網民包圍新屋嶺扣留中心，並指稱女示威者在中心內遭輪姦。他被裁定“煽惑他人參與非法集結”罪罪成，判處 160 小時社會服務令。上訴法庭裁定，考慮到答辯人對公眾秩序構成的潛在風險及其帖文的影響力，判處監禁具充分理由，因此撤銷社會服務令，改判答辯人監禁 13 個月。
- (ix) 除上訴及覆核案件外，特別職務組律師亦在源自重大公眾秩序活動的案件審訊中出庭檢控，以及出席認罪和判刑的聆訊。以香港特別行政區 訴 黃英傑及其他人 (區院刑事案件 2019 年第 888 號、2020 年第 11 及 734 號 (合併)) 一案為例，此案涉及 2019 年 7 月 21 日在港鐵元朗站內、英龍圍對開、港鐵元朗站 J 出口及形點商場發生的三宗暴亂事件，涉案暴動者逾 100 人。七名被告被裁定“暴動”、“意圖傷人”及 / 或“串謀意圖傷人”罪罪成，判處監禁三年六個月至七年不等。
- (x) 在香港特別行政區 訴 溫嘉霖 (區院刑事案件 2020 年第 737 號) 及香港特別行政區 訴 * (區院刑事案件 2020 年第 738 號) 兩案中，大批暴力示威者在 2019 年 8 月 31 日於旺角地區集結，部分人湧入港鐵太子站大肆破壞。前案被告被裁定“暴動”罪罪成，判處監禁 40 個月，而後案被告則承認一項“非法集結”及一項“管有攻擊性武器”罪，被判入教導所。

and that the risk of respondent's acts inciting further and more extensive criminal acts was extremely high. The Court of Appeal quashed the original community service order and sentenced the respondent to Training Centre.

- (vii) In *Secretary for Justice v Chan Yip-wan* CAAR 5/2021, on 1 January 2020, the respondent hurled a brick at a Special Crowd Management Vehicle ("SCMV") at the vicinity of a riot and was found to have possessed tools for damaging property. The defendant was convicted of "criminal damage" and "possession of things with intent to damage property", and was sentenced to probation order for 18 months. Upon the Prosecution's application for review of sentence, the Court of Appeal quashed the original sentence and imposed a detention centre order against the respondent to properly reflect the seriousness of the offences.
- (viii) In *HKSAR v Poon Yung-wai* CAAR 16/2020, in September 2019, the respondent published posts in a Facebook group calling netizens to besiege San Uk Ling Holding Centre and alleging that female protesters were being gang raped inside it. He was convicted of "inciting others to take part in an unlawful assembly" and was sentenced to 160 hours' community service order. The Court of Appeal held that a custodial sentence was warranted considering the potential risk the respondent had posed to public order and the influence of his posts. The community service order was quashed and the respondent was sentenced to thirteen months' imprisonment.
- (ix) Apart from appeals and reviews, counsel of the SD Team also prosecuted trials and attended plea and sentence hearings for cases arising from significant public order events. For example, *HKSAR v Wong Ying-kit and Others* DCCC 888/2019, 11 & 734/2020 (consolidated) is concerned with the three riotous incidents which involved more than 100 rioters, taking place in Yuen Long MTR Station, outside Ying Lung Wai, and at Exit J of Yuen Long MTR Station and YOHO Mall on 21 July 2019. Seven defendants were convicted of "riot", "wounding with intent" and/or "conspiracy to wound with intent" and were sentenced to imprisonment for a term ranging from three years and six months to seven years.
- (x) In *HKSAR v Wan Ka-lam* DCCC 737/2020 and *HKSAR v * DCCC 738/2020*, on 31 August 2019, a large number of violent protestors assembled in the area of Mongkok, and some flooded into and caused large-scale vandalism at Prince Edward MTR station. The defendant was convicted of "riot" and was sentenced to 40 months' imprisonment, whereas the defendant in the latter case pleaded guilty to one count of "unlawful assembly" and one count of "possession of offensive weapon" and was sentenced to training centre.

- (xi) 在香港特別行政區 訴 賴雲龍及其他人 (區院刑事案件 2019 年第 812 號) 一案中，香港國際機場在 2019 年 8 月 13 日發生暴動事件。事件中一名中國記者被暴動者公然襲擊和束縛身體。三名被告被裁定“暴動”、“襲擊致造成身體傷害”及其他罪名成立，最終判處監禁 51 個月至 66 個月不等。
- (xii) 在香港特別行政區 訴 邱宏達 (區院刑事案件 2020 年第 485 號) 一案中，大批暴動者於 2019 年 10 月 1 日在荃灣與警方對峙，其後一名警務人員被暴動者包圍和猛烈襲擊，導致他向一名暴動者開槍。被告試圖走近和協助該名暴動者，被警方制服。被告承認“非法集結”的控罪，被裁定罪名成立，判監 12 個月。
- (xiii) 在香港特別行政區 訴 劉晉旭及其他人 (區院刑事案件 2020 年第 361 號) 一案中，各被告參與 2019 年 11 月 11 日在香港中文大學二號橋發生的暴動，其間警方遭投擲硬物及汽油彈。所有被告被裁定“暴動”及其他罪名成立，判監四年九個月至四年十一個月不等。
- (xiv) 香港特別行政區 訴 陳國威及其他人 (區院刑事案件 2020 年第 234 號) 案是 2019
- (xi) In *HKSAR v Lai Wan-lung and Others* DCCC 812/2019, a riot took place at the Hong Kong International Airport on 13 August 2019, where a Chinese reporter was blatantly attacked and physically restrained by rioters. Three defendants were convicted of “riot”, “assault occasioning actual bodily harm” and other offences. They were eventually sentenced to 51 to 66 months’ imprisonment.
- (xii) In *HKSAR v Yau Wang-tat* DCCC 485/2020, a large number of rioters confronted the Police in Tsuen Wan on 1 October 2019. A police officer was left surrounded by rioters and was attacked severely, causing him to shoot at one of the rioters. The defendant, who tried to approach and assist the rioter, was subdued by the Police. He was convicted of “unlawful assembly” on his own plea and was sentenced to twelve months’ imprisonment.
- (xiii) In *HKSAR v Lau Chun-yuk and Others* DCCC 361/2020, on 11 November 2019, the defendants took part in a riot at No. 2 Bridge at the Chinese University of Hong Kong, in which hard objects and petrol bombs were thrown at the Police. All defendants were convicted of “riot” and other offences and they were sentenced to imprisonment ranging from four years and nine months to four years and eleven months.
- (xiv) *HKSAR v Chan Kwok-wai and Others* DCCC 234/2020 is a riot case which took place on 18 November 2019 in the vicinity of the Hong Kong Polytechnic University (PolyU). There were around 100 rioters equipped with protective gears and armed with offensive weapons such as petrol bombs, iron rods and



年 11 月 18 日在香港理工大學（理大）附近發生的暴動案，涉及約 100 名暴動者，他們配備防禦裝備並持有汽油彈、鐵棍及盾牌等攻擊性武器，在加士居道聚集，朝理大方向前進。示威者架設路障，又向警方投擲磚頭及汽油彈。經審訊後，所有被告被裁定“暴動”及其他罪名成立，其中七人判處監禁 38 至 40 個月不等，其餘兩名未滿 21 歲的被告則判入教導所。

- (xv) 香港特別行政區訴郭俊明及其他人（區院刑事案件 2020 年第 1056 號）案是另一宗與理大有關的暴動案。2019 年 11 月 18 日，數以百計的暴動者在彌敦道及加士居道集結，並朝理大方向前進。他們築起路障，又向警方投擲汽油彈。經審訊後，五名被告中有四人被裁定“暴動”及 / 或其他罪名成立，判監八個月至五年八個月不等。
- (xvi) 在香港特別行政區訴李卓人及其他人（區院刑事案件 2020 年第 857 至 875、877 至 884、886 至 889、891 及 893 號）（合併）一案中，2020 年 6 月 4 日維多利亞公園發生未經批准集結，案中 28 名被告被控“煽惑他人在明知的情況下參與未經批准集結”及 / 或“在明知的情況下參與未經批准集結”罪，所有被告經審訊或認罪後被裁定罪名成立，判處緩刑至監禁 14 個月不等。
- (xvii) 在香港特別行政區訴黎智英及其他人（區院刑事案件 2020 年第 536 號）一案中，九名被告共同被控於 2019 年 8 月 18 日“組織未經批准集結”及“明知而參與未經批准集結”。各被告不理會警方反對，手持長型橫額離開維多利亞公園，帶領一眾人士遊行至中環遮打道。遊行活動以遮打道為終點，在各被告將長型橫額放置於路上後結束。審訊期間，辯方從系統層面及運作層面就控罪的合憲性提出質疑。系統層面方面，辯方在陳詞時指出此等罪行不應帶有刑事制裁，以及 / 或可判處的最高刑罰為監禁五年屬過於嚴厲，與罪行既不相稱又不合憲。運作層面方面，辯方表示被告不應因參與和平結束的集會而被逮捕及

shields gathering at Gascoigne Road heading towards the direction of PolyU. Protestors set up barricades and threw bricks and petrol bombs at the Police. All defendants were found guilty of “riot” and other offences after trial. Seven were sentenced to imprisonment ranging from 38 to 40 months' imprisonment and the two aged below 21 were sentenced to training centre.

- (xv) *HKSAR v Kwok Chun-ming and Others* DCCC 1056/2020 was another riot case related to PolyU. On 18 November 2019, hundreds of rioters assembled in Nathan Road and Gascoigne Road and headed towards PolyU. They set up barricades and threw petrol bombs at the Police. Four of the five defendants were found guilty of “riot” and/or other offences after trial. They were sentenced to imprisonment ranging from eight months to five years and eight months.
- (xvi) In *HKSAR v Lee Cheuk-yan and Others* DCCC 857-875, 877-884, 886-889, 891 & 893/2020 (consolidated), an unauthorized assembly took place on 4 June 2020 at Victoria Park. 28 defendants were charged and convicted of “incitement to knowingly take part in an unauthorized assembly” and/or “knowingly taking part in an unauthorized assembly” either after trial or on their own pleas. They received sentence ranging from a suspended one to fourteen months' imprisonment.
- (xvii) In *HKSAR v Lai Chee-ying and Others* DCCC 536/2020, nine defendants are jointly charged with “organising an unauthorised assembly” and “knowingly taking part in an unauthorised assembly” on 18 August 2019. Despite the Police's objection, the defendants carried a long banner out of Victoria Park and led a procession of people to Chater Road Central. The procession finished at Chater Road with the defendants laying the long banner down on the road. At trial, the defence raised constitutional challenges on a systemic level as well as an operational level. On the systemic level, it was submitted by the defence that these offences should not carry a criminal sanction and/or the maximum sentence of five years that can be imposed is too severe to be proportional and constitutional. On an operational level, the defence submitted that the defendants should not have been arrested nor prosecuted for what turned out to be a peaceful assembly. After hearing the evidence and both parties' submissions, the Court held that the constitutional challenges failed on both the systemic and operation levels. Seven defendants were convicted after trial whilst two were convicted on their own pleas. They received sentence ranging from a suspended one to twelve months' imprisonment.

檢控。法院聽取證供及雙方陳詞後，裁定有關合憲性的質疑在系統層面及運作層面上均不成立。七名被告經審訊後被定罪，其餘兩名被告則承認控罪，被裁定罪名成立；各人判處緩刑至監禁 12 個月不等。

- (xviii) 在香港特別行政區 訴 陳皓桓及其他人 (區院刑事案件 2021 年第 107 號) 一案中，八名被告煽惑公眾參加、組織及 / 或明知而參與在 2020 年 7 月 1 日於灣仔軒尼詩道及杜老誌道一帶舉行的未經批准遊行，導致該處交通嚴重受阻。案中七名被告承認控罪，被裁定罪名成立，分別判監 6 至 12 個月不等，其餘一名被告亦在審訊後被定罪，被判監 15 個月。
- (xix) 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，從入境事務處的電腦系統非法取得 215 名人士 (包括政府高級官員、司法人員、現職高級警務人員、政界及公眾人物) 的個人資料，並向 Telegram 上某幾個起底羣組泄露有關資料，為 2019 年 9 月至 2020 年 8 月期間的起底活動推波助瀾。被告被裁定“藉公職作出不當行為”罪罪成，判處監禁三年九個月。
- (xx) 在香港特別行政區 訴 蕭張龍 (區院刑事案件 2020 年第 853 號) 一案中，被告在其 Telegram 頻道發布一連串帖文，煽惑 Telegram 用戶及網民干犯多項嚴重罪行。被告在發布此等訊息的同時，亦利用該 Telegram 頻道籌集合共逾港幣 160 萬元的款項，存放於其銀行帳戶。被告被裁定九項煽惑罪罪名成立，判處監禁四年十個月，而所籌集的款項則視為犯罪得益，全數充公。
- (xxi) 在香港特別行政區 訴 許佩怡 (區院刑事案件 2020 年第 177 號) 一案中，被告於 2019 年 8 月至 11 月期間與其他人串謀運作和管理 Telegram 頻道，在該頻道非法發布超過 1 500 人 (包括政府主要官員、法官、立法會議員、警務人員及其支持者) 的個人資料。該頻道也發布煽惑網民干犯
- (xviii) In *HKSAR v Chan Ho-wun and Others* DCCC 107/2021, the eight defendants incited the general public to join, organised and/or knowingly took part in an unauthorised procession in the vicinity of Hennessy Road and Tonnochy Road in Wan Chai on 1 July 2020, causing serious disruption to the traffic in the area. Seven defendants were convicted on their own pleas and they were sentenced to six to twelve months' imprisonment. The remaining defendant was convicted after trial and was sentenced to fifteen months' imprisonment.
- (xix) In *HKSAR v Hung Wing-sum* DCCC 344/2021, the defendant, a Clerical Assistant of Immigration Department, unlawfully obtained personal data of 215 persons, including senior government officials, judicial officers, serving senior police officers, political and public figures, from the computer system of the Immigration Department and divulged them to some Telegram doxxing groups to fuel the doxxing campaign between September 2019 and August 2020. The defendant was convicted of "misconduct in public office" and was sentenced to three years and nine months' imprisonment.
- (xx) In *HKSAR v Siu Cheung-lung* DCCC 853/2020, between October 2019 and March 2020, the defendant published a series of posts on his Telegram Channel, inciting Telegram users and netizens to commit various serious offences. In posting these messages, the defendant also used the same Telegram Channel to raise a total sum of over HK\$1.6 million which was deposited into his own bank account. The defendant was convicted of nine incitement charges and was sentenced to four years and ten months' imprisonment. The money raised was confiscated as crime proceeds.
- (xxi) In *HKSAR v Hui Pui-ye* DCCC 177/2020, between August and November 2019, the defendant conspired with others to operate and administer a Telegram Channel, on which the personal information of over 1,500 persons were unlawfully disseminated (including those of key government officials, judges, legislative councilors, police officers and their supporters). The Channel also published content inciting netizens to commit serious offences. The defendant was convicted of "conspiracy to incite other persons to commit arson" and "conspiracy to do an act with a seditious intention" and was sentenced to three years' imprisonment.
- (xxii) In *HKSAR v Kwok Wing-kin* WKCC 3842/2020, the defendant was an assistant of a legislative councillor at a meeting of the House Committee of the Legislative Council. On 8 May 2020, a number of legislative councillors staged protests during the meeting, causing disturbances which interrupted the proceedings. The defendant suddenly threw a stack

嚴重罪行的內容。被告被裁定“串謀煽惑他人犯縱火罪”及“串謀作出具煽動意圖的作為”罪罪成，判處監禁三年。

- (xxii) 在香港特別行政區 訴 郭永健 (西九龍裁判法院刑事案件 2020 年第 3842 號) 一案中，被告是一名正出席立法會內務委員會會議的立法會議員的助理。2020 年 5 月 8 日，若干名立法會議員在會議期間示威，引起擾亂致令會議程序中斷。被告在會議期間突然從公眾席拋出一疊紙張和大喊口號。突發的擾亂事件令會議中斷，而紙張更擊中一名議員的頭部。保安人員上前制止時，被告激烈反抗，引致一名人員倒地。被告被裁定“藐視罪”及“妨礙正在執行職責的立法會人員”罪罪成，判處監禁兩個月。
- (xxiii) 在香港特別行政區 訴 董栢輝 (高院刑事案件 2020 年第 197 號) 一案中，被告於 2019 年 11 月 6 日在一名立法會議員進行競選活動時刺傷後者胸口，其保鑣制服他時亦遭他刺傷。被告承認一項“有意圖而傷人”及一項“普通襲擊”罪，判處監禁九年。
- (xxiv) 在香港特別行政區 訴 陳真 (高院刑事案件 2020 年第 204 號) 一案中，被告於 2019 年 11 月 3 日在太古刺傷一對夫婦，襲擊他們的親人，並咬斷一名試圖制止他的區議員一隻耳朵。被告經審訊後被陪審團裁定“有意圖而傷人”及“普通襲擊”罪罪成，判處監禁 14 年 6 個月。
- (xxv) 在香港特別行政區 訴 鄭錦輝及其他人 (區院刑事案件 2020 年第 97 號) 一案中，各被告於 2019 年 11 月 2 日前後在灣仔一個住宅單位內儲存 59 枚汽油彈、79 枚半製成的汽油彈及其他武器，被裁定“管有物品意圖損壞財產”罪罪成，判處監禁三年至三年四個月不等。

儘管面對重重挑戰及持續上升的工作量，特別職務組律師仍致力嚴格遵照《檢控守則》履行檢控職務。

of papers from the public gallery during the meeting and shouted slogans. The sudden disturbance caused a halt of the meeting, while a legislator's head was also hit by the papers. When security officers went to stop the defendant, the defendant struggled fiercely and caused an officer to fall onto the ground. The defendant was convicted of "contempt" and "obstructing an officer of the Legislative Council in the execution of duty", and was sentenced to two weeks' imprisonment.

- (xxiii) In *HKSAR v Tung Pak-fai* HCCC 197/2020, on 6 November 2019, the defendant stabbed a legislative councillor on his chest during his election campaign activity. The defendant also injured the legislative councillor's bodyguard when being subdued. The defendant pleaded guilty to one count of "wounding with intent" and one count of "common assault", and was sentenced to nine years' imprisonment.
- (xxiv) In *HKSAR v Chen Joe* HCCC 204/2020, the defendant stabbed a couple, assaulted their relative and bit off an ear of a district councillor who attempted to stop him in Taikoo on 3 November 2019. The defendant was found guilty of "wounding with intent" and "common assault" by a jury after trial and was sentenced to fourteen years and six months' imprisonment.
- (xxv) In *HKSAR v Cheng Kam-fai and Others* DCCC 97/2020, on about 2 November 2019, the defendants stored 59 petrol bombs, 79 semi-finished petrol bombs and other weapons in a residential flat in Wanchai. They were convicted of "possessing things with intent to damage property" and were sentenced to imprisonment ranging from three years to three years and four months.

Despite the challenges and continuous upsurge in workload, Counsel in the SD Team strive to discharge their prosecutorial duties in strict compliance with the Prosecution Code.



外展及培訓 Outreach and Training

國際刑事法律研討會 2021

國際刑事法律研討會於 2021 年 11 月 2 日在香港會議展覽中心舉行，是香港法律周 2021 於 11 月首周舉辦的重點活動之一。

研討會的講者來自不同司法管轄區，均為知名刑事法律從業者，包括前終審法院常任法官、高等法院首席法官、法學教授、國際檢察官協會參議會副召集人、資深執法人員、御用大律師及資深大律師。講者就“刑法中的人權問題”、“判處罪犯：維持公眾對刑事司法的信任”、“在內地與香港打擊貪污”，以及“眾籌還是募集犯罪資金”四個刑法議題進行討論。超過 900 名人士親身出席或透過網上平台參與。

研討會為刑事法律從業者提供交流平台，探討其他司法管轄區的經驗和審視香港的做法，以促進刑事司法制度的發展。參加者對研討會安排、討論議題及內容的評價非常正面。

International Criminal Law Conference 2021

The International Criminal Law Conference was held on 2 November 2021 at the Hong Kong Convention and Exhibition Centre and it was one of the focal events of the Hong Kong Legal Week 2021 which was organized in the first week of November.

Distinguished criminal law practitioners from different jurisdictions gave speeches in the Conference. These included former Permanent Judge of the Court of Final Appeal, Chief Judge of the High Court, Professor of Law, Vice Chairman (Senate) of the International Association of Prosecutors, experienced law enforcement officers, Queen's Counsel and Senior Counsel. The speakers engaged in discussions on four criminal law topics, namely "Human rights considerations in the criminal law context", "Sentencing offenders: maintaining public confidence in criminal justice", "Combating corruption in the Mainland and Hong Kong" and "Crowdfunding or Crime-funding?". More than 900 participants took part in it by attending in person or joining through internet platforms.

The Conference provided a platform for exchanges, to examine experience from other jurisdictions and to review our own practices with a view to enhancing the development of the criminal justice system. The participants of the Conference gave very positive feedbacks on the arrangement of the Conference as well as the topics and contents.

持續法律進修課程

本科在 2021 年舉辦了多個研討會，反應良好。研討會議題廣泛，例如副刑事檢控專員譚耀豪資深大律師主講的研討會探討私營機構賄賂法的最新發展；國際法律科副首席政府律師陳淑玲女士則在她主講的研討會中分享對刑事事宜法律合作的見解。



實習計劃

在 2021 年，多個內地機構的官員在不同時期於刑事檢控科實習，以了解香港刑事司法制度的運作情況和香港如何進行檢控工作。實習人員包括：

- 河北省司法廳孟德新先生 (5 月 17 至 21 日)
- 陝西省司法廳周欣女士 (5 月 17 至 28 日)
- 天津市司法局李燕女士 (6 月 7 至 18 日)
- 深圳海關古麗雅女士 (6 月 15 至 18 日)
- 全國人民代表大會常務委員會法制工作委員會林哲思女士 (6 月 15 至 25 日)

中學法律講座

本司自 2020/2021 學年起推出“明法・傳法計劃”，促進中學生正確理解及實踐法治，包括加強他們的守法意識。

在這項計劃下，本科的檢控人員到訪中學，就不同議題舉行講座，內容包括檢控少年被告、校園欺凌、性罪行、濫用藥物、電腦網絡罪行及與公眾秩序相關的罪行，深受教育界歡迎。我們希望透過法律講座讓學生深入認識法治，以及刑事司法制度和他們在當中擔當的角色。

Continuing Legal Education

Various seminars were conducted in 2021 and were well-received. The topics were wide-ranging, for example, a seminar was held by Mr William Tam SC, Deputy Director of Public Prosecutions on recent developments in the law of bribery in the private sector. Ms Ada Chan, Deputy Principal Government Counsel of the International Law Division gave a seminar to share her views on legal cooperation in criminal matters.

Attachment Programme

In 2021, a number of Mainland officials from various institutions were attached to the Prosecutions Division for different periods of time during which they were arranged to understudy the operation of the criminal justice system in Hong Kong and how prosecution work is carried out here. The participants included:

- Mr Meng Dexin, from the Hebei Provincial Department of Justice (17-21 May)
- Ms Zhou Xin, from the Shaanxi Provincial Department of Justice (17-28 May)
- Ms Li Yan, from the Tianjin Justice Bureau (7-18 June)
- Ms Gu Liya, from the Shenzhen Customs District (15-18 June)
- Ms Lin Zhesi, from the Legislative Affairs Commission of the Standing Committee of the National People's Congress (15-25 June)

Law Talks for Secondary Schools

Starting from the academic year 2020/2021, DoJ introduced the “Rule of Law Enlightenment” Programme to promote proper understanding and practice of the rule of law, including law-abiding awareness, among secondary school students.

Under the Programme, prosecutors of the Division give talks to secondary schools on diverse topics including prosecution of juvenile defendants, school bullying, sexual offence, abuse of drug, cybercrime and offences relating to public order. The talks were well-received by the education sector. It was hoped that through the law talks, students could gain an in-depth understanding of the rule of law as well as the criminal justice system and their role in the system.

練習計劃

自 2020 年起，經驗不足 5 年的私人執業大律師及律師可於此計劃下輪流擔任資深大律師或資歷較深的大律師的副手。他們會以每日定額酬金，在合適的外判案件中協助進行檢控工作。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，讓他們汲取檢控較為複雜和敏感案件的經驗和技巧。在 2021 年，共有 20 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 2021 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。



部門檢控人員培訓課程

刑事檢控科於 2021 年 7 月舉辦為期 14 天的部門檢控人員培訓課程，共有 33 名來自政府各決策局／部門及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。

Understudy Programme

Since 2020, counsel and solicitors in private practice with less than 5 years' post call/admission experience can be engaged, on a rotating basis, to act as an understudy to senior counsel or senior junior counsel and to take part in the prosecution work of suitable briefed out cases at a fixed daily rate under this programme. This has provided valuable learning opportunities to junior counsel for gaining experience and skills in prosecuting cases of complexity and sensitivity. A total of 20 junior counsel in private practice participated in the programme in 2021.

Criminal Advocacy Course

In 2021, two 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.

Departmental Prosecutors Training Course

The Prosecutions Division organized a 14-day Departmental Prosecutors Training Course in July 2021. Attended by 33 lay prosecutors from different government bureaux / departments and autonomous bodies, the course aimed to equip departmental prosecutors the knowledge and skills necessary for their discharge of duties.



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 2021 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，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，包括一系列課堂講座，內容集中講解實體刑法和程序法的一些重要議題；模擬法庭實習訓練；以及派駐裁判法院實習，其間新聘人員會先在督導下執行刑事案件檢控工作，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。

Divided into three 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 six 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 2021 underwent a tailor-made nine-month training programme. The new recruits are expected to play a pivotal role in maintaining the high standard of the prosecution work in the Magistrates' Courts.

The nine-month training programme consisted of a series of lectures focusing on important topics of substantive and procedural law, mock court exercises, and 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 2021 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 15,410 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，88.4% 符合本科的服務承諾，即在 14 個工作天內作出回覆，而 2020 年則是 82.3%。

工作量

審訊籌備及提供法律指引的工作

本科在 2021 年提供法律指引的次數較 2020 年增加 10.9%。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。

Performance Standards and Targets

In 2021, in addition to court work, the Division gave a total of 15,410 legal advice on criminal matters to government bureaux and law enforcement agencies. Of all the requests for legal advice, 88.4% were replied to within 14 working days in accordance with our performance target, as compared to 82.3% in 2020.

Caseload

Trial preparation and advisory work

The number of legal advice given in 2021 increased by 10.9% as compared to 2020. 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.

2020 13,895

提供法律指引次數
Number of legal advice given

2021 15,410

2020 366

籌備由原訟法庭審理的案件數目
Number of cases prepared for the Court of First Instance

2021 256

2020 1,098

籌備由區域法院審理的案件數目
Number of cases prepared for the District Court

2021 1,120

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

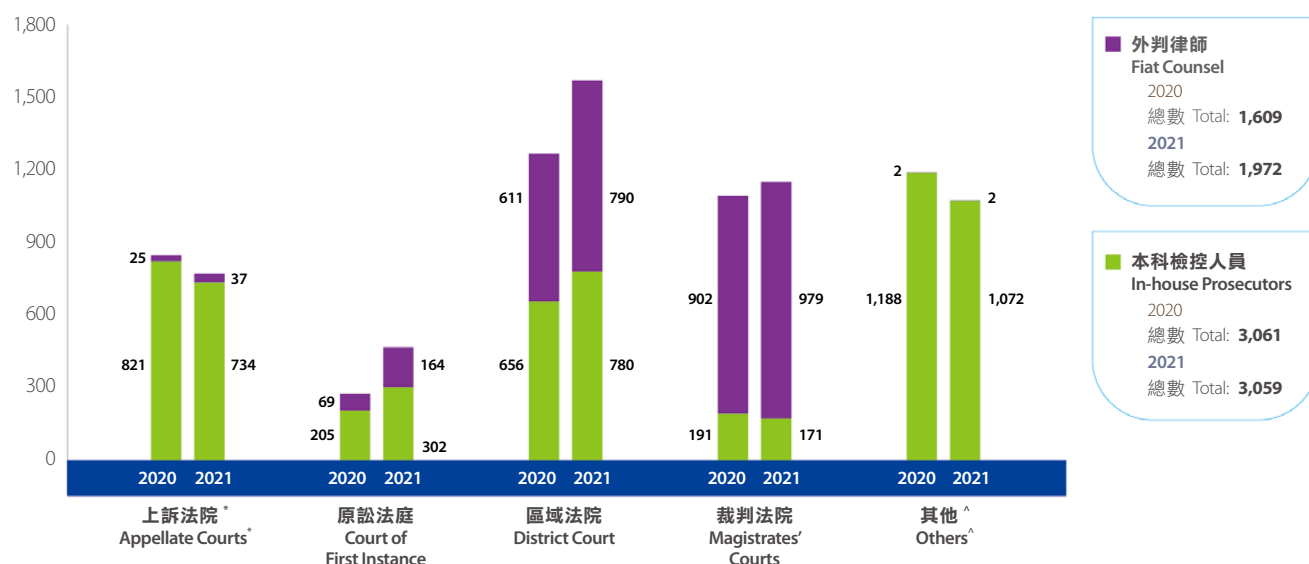
年內處理的案件總數錄得上升。與 2020 年相比，由本科檢控人員處理的案件數目幾乎相同，由外判律師處理的案件數目則上升 22.6%。

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

There was an increase in the total number of cases conducted for the year. As compared to 2020, the number of cases conducted by in-house prosecutors was nearly the same while the number of cases conducted by fiat counsel increased by 22.6%.

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



* 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.

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

2020

110,391

法庭檢控主任及外判律師在裁判法院處理的案件數目
Number of Cases conducted by Court Prosecutors
and Fiat Counsel in place of Court Prosecutors in the
Magistrates' Courts

2021

148,282

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					
2020	841	1,214	1,101	52.4%	65.1%
2021	1,448	2,077	1,587	56.7%	69.0%
區域法院 District Court					
2020	674	134	56	70.5%	93.5%
2021	884	198	95	67.6%	91.9%
原訟法庭 Court of First Instance					
2020	187	36	28	56.3%	88.8%
2021	220	64	62	50.8%	82.1%

* 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	
	2020	2021	2020	2021
終審法院上訴證明書： Certificate to appeal to the Court of Final Appeal:				
得直 Allowed	1	1	0	0
駁回 Dismissed	27	17	0	0
撤銷 Withdrawn	2	0	0	0
待決 ^註 Pending ^{Note}	6	5	0	0
總數 Total	36	23	0	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	2	9	0	0
駁回 Dismissed	54	54	1	0
撤銷 Withdrawn	2	4	0	0
待決 ^註 Pending ^{Note}	40	8	0	0
總數 Total	98	75	1	0
向終審法院提出的上訴： Appeal to the Court of Final Appeal:				
得直 Allowed	1	4	1	0
駁回 Dismissed	4	5	0	0
撤銷 Withdrawn	0	0	0	0
待決 ^註 Pending ^{Note}	1	1	0	0
總數 Total	6	10	1	0

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

2020 2021
總數 Total: 319 總數 Total: 304

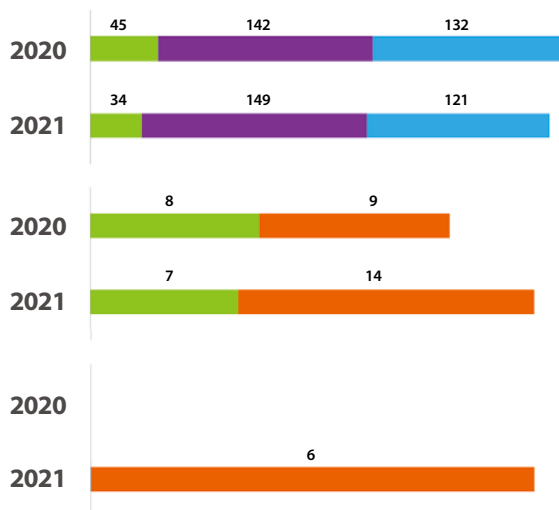
刑事檢控科提出的覆核刑罰申請
By Prosecutions Division to review sentences

2020 2021
總數 Total: 17 總數 Total: 21

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

2020 2021
總數 Total: 0 總數 Total: 6

Court of Appeal



原訟法庭

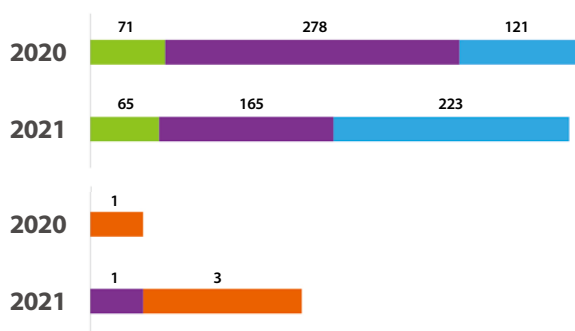
被告提出的上訴
By Defendants

2020 2021
總數 Total: 470 總數 Total: 453

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

2020 2021
總數 Total: 1 總數 Total: 4

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。

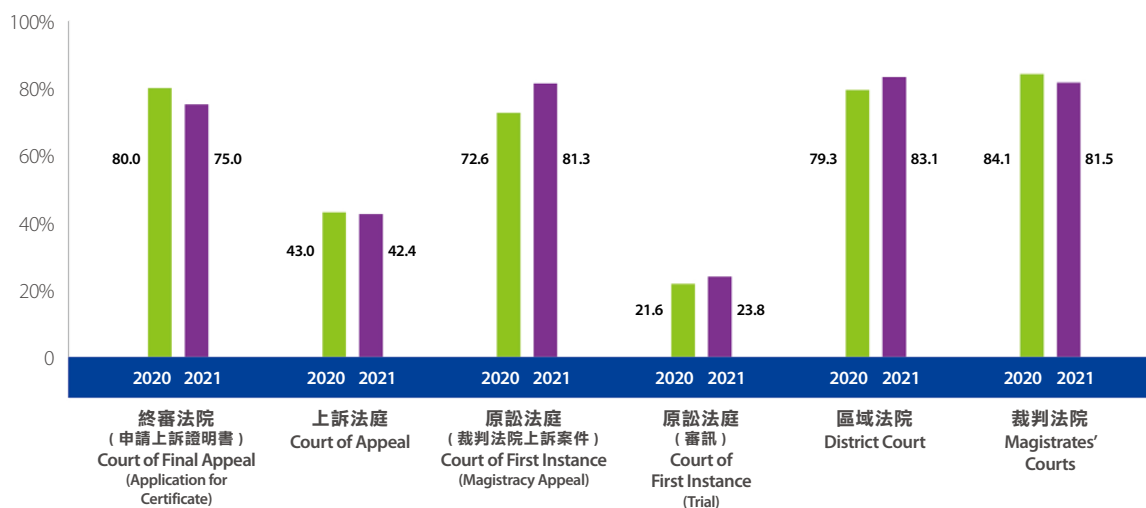
Note - This refers to the number of applications initiated and had not yet been concluded in the respective year.

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)



鳴謝

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