



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啓動/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) *HK SAR 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.