



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 doxing 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.

