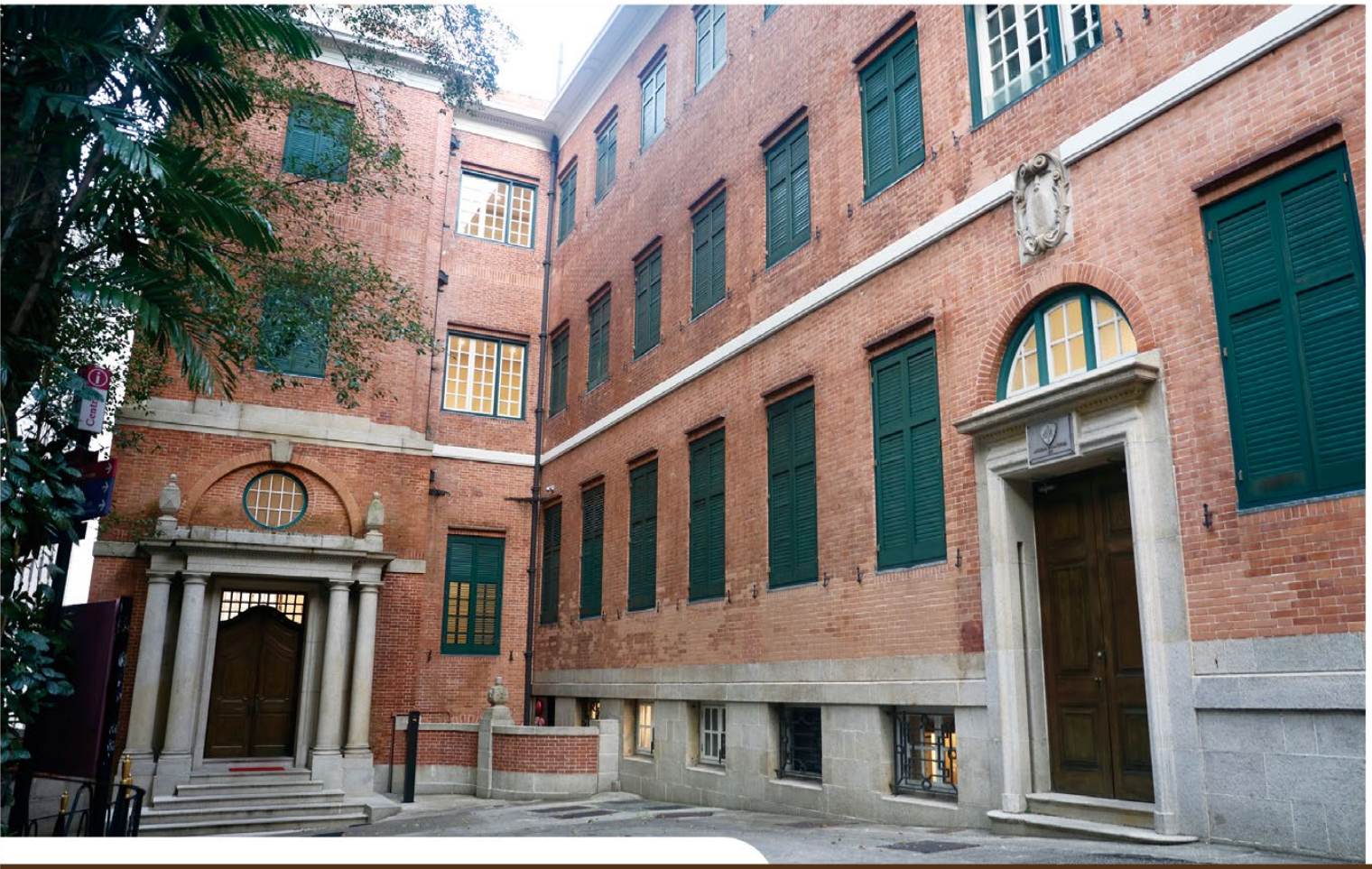

分科三 — 上級法院
Sub-division III - **Higher Courts**

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、診所及衞生服務機構。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 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 鄺雄光及另二人* [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、兩項促致未滿 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定罪的被告提出的上訴和上訴許可申請。在 2021 年，由被定罪的被告向終審法院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 詹心桀* [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，但其左肩膊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.