



香港刑事檢控
Prosecutions
Hong Kong **2022**



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
2022

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 2022 年的工作回顧。

一如往年，本科在 2022 年繼續面對種種新挑戰和機遇。除繁重的工作外，新冠疫情肆虐也持續擾亂了本科的工作秩序。

雖然如此，本科人員以專業幹練、竭誠勤勉的態度履行職責，不遺餘力地捍衛法治，令我深感自豪。我深信我們已準備就緒，繼續秉持《基本法》第六十三條賦予的獨立檢控權，並以正直、誠實和廉潔之心秉行公義。

承蒙司長和本科所有同事在年內一直鼎力支持，我得以履行刑事檢控專員一職所肩負的重大公共責任，謹此衷心致謝。在各位全力支援下，我們得以羣策羣力，竭誠維護香港的法治。



刑事檢控專員

楊美琪

2023 年 7 月 26 日

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

26 July 2023

Dear Secretary for Justice,

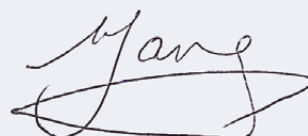
I am pleased to submit to you the Yearly Review of the Prosecutions Division for 2022.

Like any other year, 2022 presented the Division with new challenges and opportunities. Besides heavy caseload, the prevalence of the COVID-19 pandemic continued to disrupt the work setting.

Yet, I am proud to say that officers of the Division discharged their duties in a most professional and diligent manner. They have demonstrated an unwavering commitment to the rule of law. I am confident that we are well equipped to continue safeguarding prosecutorial independence as enshrined in Article 63 of the Basic Law, while delivering justice with integrity, honesty, and probity.

May I take this opportunity to express my sincere gratitude to you and my colleagues for the continued support rendered to me throughout the year, which has been instrumental in my discharge of the great public responsibility that comes with the position of Director of Public Prosecutions. I am most fortunate to have all of your support in our collective endeavour to uphold the rule of law for Hong Kong.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Maggie Yang', with a large, stylized flourish at the end.

(Maggie Yang)
Director of Public Prosecutions

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刑事檢控專員的序言

Director's Overview

2022 年充滿令人振奮的新挑戰，但最重要的是，本科在這多變的一年成果豐碩。在 2019 冠狀病毒病疫情期間，本科面對沉重的工作量和空前的挑戰，但仍推行多項措施以提高工作成效和效率，及加深公眾對刑事法律及司法制度的認識。年內，本科人員繼續致力以專業誠信的態度維護法治，為市民提供卓越的檢控服務。團隊上下專業盡責，我身為其中一員，實在與有榮焉。

2022 was another year of new and exciting challenges for the Division, but above all, it was a year of change and remarkable achievement. Amidst heavy caseload and novel challenges brought about by the COVID-19 pandemic, initiatives were pursued to increase the effectiveness and efficiency of our operations and promote public understanding of criminal law and justice. Officers of the Division continue to uphold the rule of law with integrity, commitment, and professionalism, serving the community as a first-class prosecution service – a team of dedicated professionals of which I take pride in being a part.



法治是香港社會有效運作的基石。本年度工作回顧的主題為“鞏固法治 堅定不移”。在維護法治方面，檢控人員的角色舉足輕重。我們作為秉行公義者，須公正地為社會及代社會行事，職務艱巨但光榮。為確保我們妥善履行職責，《基本法》第六十三條訂明律政司主管刑事檢察工作，不受任何干涉。事實上，檢控人員的日常工作離不開檢控獨立這項基本原則。從作出檢控決定、代表控方出庭進行審訊，以至處理刑事上訴案件，檢控人員均須作出獨立判斷，以公眾的最佳利益為依歸。全賴檢控獨立的保證，我們得以堅定不移，無畏無懼地悉力追求公義。

一如在檢控過程其他階段所作的決定，是否提出檢控的決定是單憑證據而獨立作出的。只有在有充分證據顯示有合理機會達致定罪，以及進行檢控是合乎公眾利益的情況下才會提出檢控。在作出檢控決定時，檢控人員必須基於法律、可證明的事實，及整體公眾利益，以公正理智的方式行事。在整個過程中，我們絕不容許不相關的因素（例如個人意見、政治立場，和傳媒的關注程度）影響判斷。我們全力確保所有決定符合公眾利益，因為檢控人員代表廣大市民，最終亦向他們負責。

正因為肩負為社會發聲的重任，檢控人員行事必須持正不阿，恪守最高的公平標準。事實上，檢控人員的首要責任是要對整體社會以及每個疑犯或被告人主持公義。這項責任包括客觀地提出證據、堅定而謙恭地進行訟辯，以及主動披露可能對被告有所幫助的材料。我們滿懷信心地堅定執行檢控工作，也鏗而不捨地維護被告人的權利及利益，並且對他們以禮相待。不論現在還是將來，公平公正都是我們作為秉行公義者行事的根本，絕非言過其實。

盡快作出和落實檢控決定是我們確保公平社會的責任之其一要務。因此，我們並沒有忽視保

The rule of law is the foundation upon which the functioning of our society depends. The theme of this year's review is "Reinforcing the Rule of Law with Unwavering Faith". Prosecutors play an instrumental role in upholding the rule of law. We act as ministers of justice discharging the onerous but honorable duty to act fairly, for and on behalf of the community as a whole. To ensure the proper discharge of our duties, Article 63 of the Basic Law makes clear our Department's mandate: To control criminal prosecutions free from any interference. Indeed, the cardinal principle of prosecutorial independence permeates the day-to-day work of a prosecutor. From making prosecutorial decisions, conducting trials, to handling criminal appeals, prosecutors apply independent judgment to do what best serves the public interest. In doing so, it is the guarantee of prosecutorial independence that allows us to fearlessly and fervently pursue public justice with unwavering faith.

As with decisions made at any other stage of the prosecutorial process, the decision whether to prosecute is made independently, on evidence and evidence alone. A prosecution will only be initiated where there is sufficient evidence demonstrating a reasonable prospect of conviction, and where the public interest requires the prosecution to proceed. In making prosecutorial decisions, prosecutors must act fairly and dispassionately on the basis of the law, the provable facts, and the general public interest. In no part of the decision-making process do we allow irrelevant considerations, such as personal opinion, political stance, and media attention to cloud our judgment. We spare no effort in ensuring that decisions made are in the public good, for it is the community at large that prosecutors represent, and to whom we prosecutors are ultimately accountable.

In shouldering the responsibility of advocating for the community, it goes without saying that prosecutors must act with utmost integrity and align themselves with the highest standards of fairness. In fact, ensuring fairness is the primary obligation of a prosecutor. We owe a duty of fairness not only to the community as a whole, but also individually to each person suspected or accused of crime. This duty includes the objective presentation of evidence, the exercise of firm but courteous advocacy, and the active disclosure of material that may assist an accused. While we prosecute firmly and confidently, we do so with resolute insistence to safeguard the rights and interests of accused persons, treating them with respect and dignity. It is certainly no overstatement to say that fairness is, and always will be, of the essence to our roles as ministers of justice.

A facet of our duty of fairness to the community is our obligation to make and proceed with prosecutorial decisions as expeditiously

持並提升工作效率的需要。為精簡工作流程，本科在年內進行重組，令案件從提供法律指引、審訊，以至上訴的階段得到綜合的處理。此外，因應虐兒案件與日俱增，本科成立專責小組，確保此類案件能夠從速通過刑事司法程序，同時將對受害人的影響減至最低。憑着矢志為大眾利益服務的精神，我深信本科人員將一如既往，公平公正、不偏不倚地及時伸張正義。

為掌握知識及專業技巧令我們能夠更妥善地服務社會，本科的其一首要任務是加強同事的培訓，豐富他們的閱歷。年內，本科為逾 30 名新入職人員舉辦刑事訟辯課程，又為超過 90 名來自政府各決策局和部門的非法律專業檢控人員舉辦部門檢控人員培訓課程。我們亦為科內負責在裁判法院執行檢控工作的法庭檢控主任舉辦悉心設計、為期 9 個月的培訓課程。這些課程就刑事法律的常規及程序提供寶貴培訓，重點教授審訊訟辯及上庭檢控的實際技巧。此外，本科亦定期舉辦研討會，由資深同事及來自警隊和其他政府部門的嘉賓講者主持，以確保檢控人員了解業界的最新發展。透過這些及日後陸續推出的培訓措施，我會確保本科上下同心，奮力邁向更高的專業水平。

我們以堅定不移的信念鞏固法治，同時亦十分倚賴公眾對我們的信任。檢控人員與公眾互相信任、尊重和理解至關重要。因此，本科羣策羣力，透過外展活動與社區交流。為推廣法治及加深公眾對本港刑事司法制度的認識，本科在 8 月舉行檢控週 2022，吸引逾 600 名參加者。為期一周的活動包括互動法律問答比賽、標誌創作比賽、模擬法庭、簡介會和法庭參觀。年內，本科的檢控人員亦到不同的中學主持講座，講解多個刑事法律議題。展望未來，社區外展活動將繼續是我們工作的重要一環。我們會繼續鞏固公眾對本科工作的信心和支

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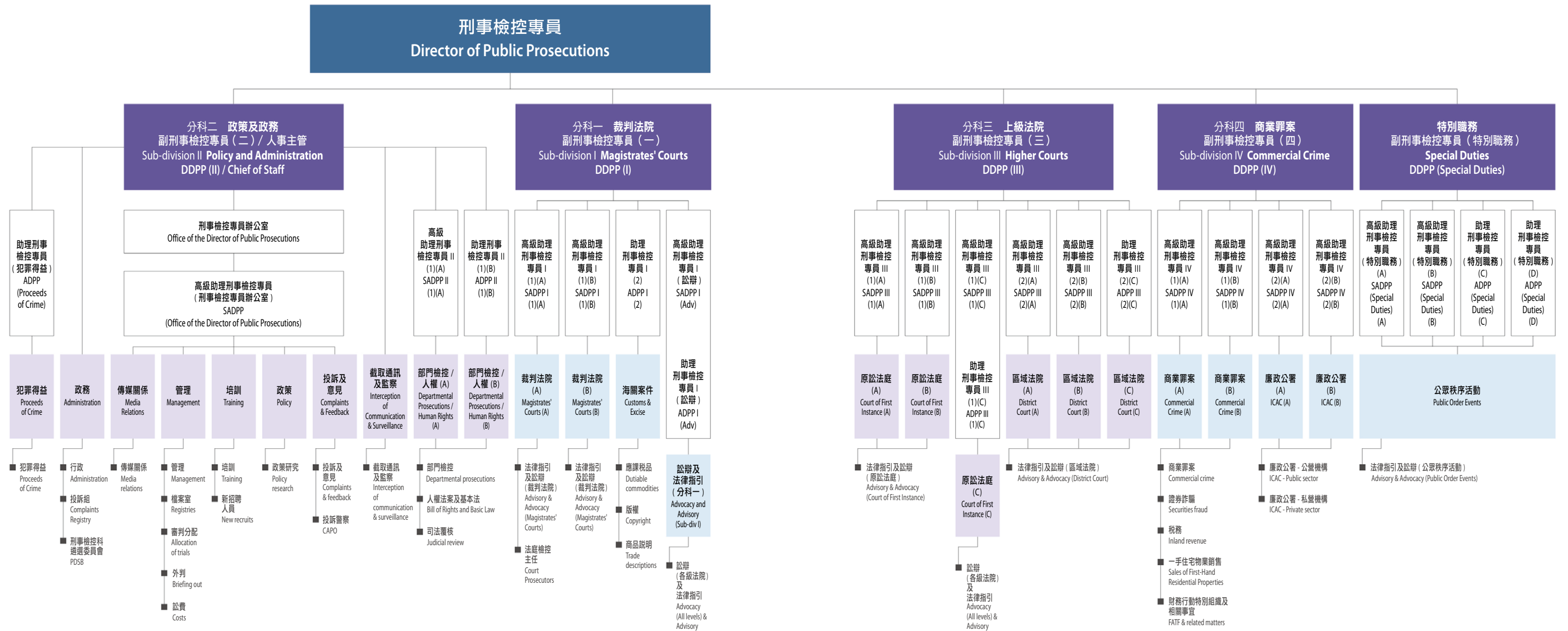
持，因為公眾對我們的信任，正正是推動和激勵我們精益求精的動力。

法治是現代社會的經緯，為所有人帶來和平、和諧及繁榮。法治既是執行刑事司法的關鍵，我們必須以堅定不移的信念和決心，不屈不撓地維護法治，現在如是，將來亦然。除了嚴格保持檢控水準外，我們亦會繼續以正直、誠實和廉潔之心秉行公義。同時，我們沒有驕傲自滿的餘地，並會心存謙卑地追求卓越。無論未來有何挑戰，我們都會堅守對社會的承諾：本着無懼無私的精神，努力不懈維護法治。請與我們同行，鍥而不捨地尋求公義。

The rule of law is the golden thread running through the fabric of our modern society, bringing peace, harmony, and prosperity to all. Being the linchpin on which the administration of criminal justice depends, it must and will be upheld with unwavering faith, strong determination, and enduring perseverance. On top of observing strict adherence to prosecutorial standards, we will continue to deliver justice with integrity, honesty, and probity. At the same time, we make no room for complacency, and will strive to pursue excellence with humility. Whatever challenges the future brings, we stand committed to our promise to the community: To uphold the rule of law fearlessly, tirelessly, and selflessly. Join us, as we continue our journey in the endless pursuit of justice.

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
 - PDSB = Prosecutions Division Selection Board
 - CAPO = Complaints Against Police Office
 - FATF = Financial Action Task Force
 - ICAC = Independent Commission Against Corruption

	編制 Establishment	人手 Strength	
首長級人員	Directorate Officer	27	20
高級政府律師	Senior Government Counsel	81	63
政府律師	Government Counsel	61	75
法庭檢控主任職系	Court Prosecutor Grade	102	80
律政書記職系	Law Clerk Grade	36	27
法律翻譯主任職系	Law Translation Officer Grade	9	9
其他支援人員	Other support staff	243	216
總數	Total	559	490

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）負責監督在香港七個裁判法院循簡易程序檢控刑事案件的工作績效，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黑錢罪行的各類條例向香港海關提供法律指引。

Sub-division I (Magistrates' Courts) has the responsibility of overseeing the effective and efficient prosecution of criminal cases at the summary level in the seven Magistrates' Courts in Hong Kong, 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.



2022 年年初，傳播力極強的 Omicron 變異病毒株導致本港經歷了動盪的疫情期。2019 冠狀病毒病第五波疫情來勢既急且猛。鑑於當時的公共衛生情況和相關事態發展，除處理緊急和必要的法庭聆訊及事宜外，原訂於 2022 年 3 月 7 日至 2022 年 4 月 11 日在裁判法院進行的所有聆訊一律押後。為協助控制和預防 2019 冠狀病毒病在本港持續蔓延，大量違反《預防及控制疾病條例》（香港法例第 599 章）罪行的案件在裁判法院進行檢控。

儘管困難重重，一如往年，本港大部分刑事檢控都是在裁判法院審理。這些案件主要由警方負責調查，所涉罪行影響社會日常生活，包括“傳統”罪行例如詐騙、盜竊、行騙、危險藥物及毒藥相關罪行、搶劫、賣淫、涉及兒童色情物品的罪行、非法賭博、收受賭注、家庭暴力、襲擊、刑事毀壞、三合會相關罪行、刑事恐嚇、公共秩序事件引起的罪行、交通罪行等，罪行種類之多實未能盡錄。

2022 年，裁判法院共處理 134,756 宗由不同執法機構調查的刑事案件，部分需要法律指引的案件，主要由本分科 36 名高級檢控官及檢控官處理。本分科提供的法律指引的數量繼在 2018 年及 2019 年分別由 3,880 項及 5,709 項急升之後，2022 年的數字持續高達 6,145 項，與之前兩年一樣高企。我們的檢控人員繼續以專業和不偏不倚的態度履行職責，在每項指引中根據所得的證據作出考慮和決定。

除提供法律指引外，本分科的律師亦負責在法庭檢控部分性質較為敏感及複雜的審訊和上訴案件。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 640 宗，其中 118 宗獲原訟法庭判決上訴得直，360 宗被駁回，162 宗由被告撤回。身為秉行公義者，我們的檢控人員深明在處理上訴時協助法庭達致公平公正的裁決，是其職責所在。

2022 年，我們有 80 名法庭檢控主任在裁判法院工作。法庭檢控主任同為刑事檢控科的成員，聯同外判私人執業大律師和律師共處理了 134,756 宗案件中大部分案件的檢控工作。

In early 2022, Hong Kong went through a turbulent epidemic phase posed by the highly transmissible Omicron variant strain. The fifth wave of the COVID-19 epidemic was rapid and fierce. In light of the then public health situation and related developments, save for handling urgent and essential court hearings and matters, all hearings of the Magistrates' Courts originally scheduled between 7 March 2022 and 11 April 2022 were generally adjourned. To assist in the control and prevention of the continued spread of COVID-19 in Hong Kong, a massive number of offences contrary to the Prevention and Control of Disease Ordinance, Cap. 599, Laws of Hong Kong, were prosecuted at the Magistrates' Courts.

Despite the difficulties, as in previous years, the lion's share of criminal prosecutions in Hong Kong was conducted in the Magistrates' Courts. They were cases mainly investigated by the Police involving crimes which affected the everyday life of the society. Such cases include other "traditional" offences such as fraud, theft, deception, dangerous drugs and poison related offences, robbery, vice, child pornography, illegal gambling, bookmaking, domestic violence, assaults, criminal damage, triad related offences, criminal intimidation, offences arising from public order events and traffic offences. The list is by no means exhaustive.

In total, 134,756 criminal cases investigated by different Law enforcement agencies had been dealt with in the Magistrates' Courts in 2022. Some of these cases required legal advice which were mainly handled by our 36 Senior Public Prosecutors and Public Prosecutors of this Sub-division. The total number of advice given in 2022 remained at a high level of 6,145 as similar to the preceding two years following a sharp rise from 3,880 and 5,709 in 2018 and 2019 respectively. Our prosecutors continue to discharge their duty in a professional and impartial manner when considering and deciding on the evidence available in each advice.

Apart from providing legal advice, counsel of this Sub-division also prosecuted some of the more sensitive and complex trials and appeals in court. There were 640 magistracy appeals brought by defendants against magistrates' decisions, verdicts, orders or sentences. Of this number, 118 were allowed by the Court of First Instance, 360 dismissed and 162 withdrawn by the defendants. In conducting these appeals, our prosecutors being ministers of justice are fully aware of our duty to assist the Court in achieving just and fair results.

In 2022, there were 80 Court Prosecutors working in the Magistrates' Courts. Our Court Prosecutors who are also members of the Prosecutions Division, together with barristers and solicitors

為持續應付本分科職系的人手壓力，八名新入職的法庭檢控主任在完成為期九個月的培訓課程和考試及格後，於 2022 年第三季獲調派至不同裁判法院工作。培訓課程主要包括講座、模擬審訊、參觀政府部門和在有督導或沒有督導的情況下，派駐法院實習，旨在使新入職人員具備必要的法律知識和訟辯技巧，以處理裁判法院種類繁多的案件。

法庭檢控主任亦有致力繼續提升法律專業資格，其中一名法庭檢控主任在 2022 年獲得法學碩士學位。一名高級二等法庭檢控主任獲選出任檢控官及派駐中環律政中心履職，讓職系成員有機會擴闊其技巧和經驗。

基於司法管轄權和法定限制，裁判法院審理的案件就單一罪行判處的刑期不大可能超過兩年，而就多項罪行判處的刑期則不大可能超過三年。儘管這些案件的性質或非最嚴重，但往往引起傳媒極大興趣和公眾高度關注。值得注意的是，“窺淫、非法拍攝或觀察私密部位及相關發布影像”罪行已納入《刑事罪行條例》(第 200 章)第 XIIIA 部，並於 2021 年 10 月 8 日生效。政府通過實施有關條文，向社會傳達明確信息，即這種公然侵犯他人隱私的行為必須受到阻嚇，受害人必須得到保護，而且干犯這些罪行會有嚴重後果。

截至 2022 年 9 月，即有關條文生效近一年後，與各類“窺淫”罪行有關的案件共有 602 宗，其中 413 宗涉及“非法拍攝或觀察私密部位”，較 2021 年有關法例訂立前類似性質的案件數目增加了近 14%。儘管警方對這些案件進行的調查的數目大幅增加，但本分科的律師與執法機關攜手合作，並根據一致的檢控方法果斷和迅速地提供法律意見。

同上，《2021 年個人資料(私隱)(修訂)條例》已於 2021 年 10 月 8 日生效，以打擊侵犯個人資料私隱的“起底”行為。本分科和個人資料私隱專員公署繼續在實施新法例條文方面保持緊密合作，以阻嚇在未獲同意下披露個人資料。在香港特別行政區訴葉駿軒(西九龍裁判法院刑事案件 2022 年第 1638 號)一案中，被告因金錢糾紛，在未獲兩名受害人的同意下，在一個社交媒體平台的兩個不同聊天羣

in private practice prosecuting on fiat, prosecuted the bulk of the 134,756 cases.

In a continuing effort to deal with the strain on the manpower of the Grade, a batch of eight newly recruited Court Prosecutors, on completion of a nine-month training programme and passing the examinations, have already been deployed to work in different Magistrates' Courts in the third quarter of 2022. The training programme which comprised of mainly lectures, mock trials, visits to government departments and court attachments with or without supervision, aimed at equipping the new recruits with the necessary legal knowledge and advocacy skill to handle the wide range of cases in the Magistrates' Courts.

Court Prosecutors continue to advance their legal qualifications, and one of them successfully obtained a Master in Law (LLM) degree in 2022. As a platform for opportunity to broadening the skill and experience of the Grade member, a Senior Court Prosecutor II has been selected to act as Public Prosecutor and stationed at Justice Place in Central.

As a matter of jurisdictional and statutory restrictions, cases tried at the Magistrates' Courts are those where the sentence of imprisonment is unlikely to exceed two years for conviction of a single offence or three years for conviction of multiple offences. Although these cases may not be the most serious ones, they often attract significant media interests and public attention. It is noteworthy that the offences of “voyeurism, unlawful recording or observation of intimate parts and related image publication” were incorporated into Part XIIIA of the Crimes Ordinance, Cap. 200, which came into effect on 8 October 2021. By implementing the provisions, the Government conveys a clear message to the community that such blatant intrusion of another's privacy must be deterred and the victims must be protected, and that there are grave consequences for committing the offences.

As of September 2022, nearly a year after the provisions came into effect, there was a total of 602 cases relating to the various types of offences of “voyeurism”. Among them, 413 were cases involving “unlawful recording or observing intimate parts” which is nearly 14% higher than the number of cases of similar nature in 2021 before the enactment of the relevant legislation. Despite the substantial increase in the number of police investigation on these cases, counsel of this Sub-division worked hand in hand with the Law enforcement agencies, and provided decisive and speedy legal advice under a consistent approach on prosecution.

Likewise, the Personal Data (Privacy) (Amendment) Ordinance 2021 came into effect on 8 October 2021 to combat “doxxing” acts that are intrusive to personal data privacy. This Sub-division and

組發布受害人的姓名、住址及僱主名稱，其中一名受害人的手提電話號碼亦在其中一個羣組上發布。本分科向個人資料私隱專員公署提供法律指引後，被告遭到檢控。經審訊後，被告就一個聊天羣組被裁定一項“未獲同意下披露個人資料”罪罪名成立，以及就另一個聊天羣組被裁定一項“未獲同意下披露個人資料，導致資料當事人或其家人蒙受指明傷害”罪罪名成立。這是自“起底”條文訂立以來，首宗有被告經審訊後被定罪的案件。由於裁判官的裁決現正根據《裁判官條例》(第 227 章)第 104 條予以覆核，被告尚未判刑。

本分科亦負責檢控一宗傳媒廣泛報道、涉及香港保護兒童會童樂居(童樂居)的虐待兒童的案件。在香港特別行政區 訴 李慧雯(九龍城裁判法院刑事案件 2022 年第 1883 號)一案中，被告是受僱於童樂居的幼兒工作人員，涉及多次襲擊年齡介乎一至三歲的幼童，例如拍打幼童的頭部和把幼童推倒在地。被告被控九項“對所看管兒童虐待”罪。她否認控罪，經審訊後被裁定所有罪名成立，判處監禁 15 個月。

關於疏忽照顧、虐待和殘酷對待動物的議題在 2022 年繼續廣受公眾關注。為切合社會的轉變和期望，我們嚴肅處理這類案件，並就多宗涉及殘酷對待動物的案件提出檢控。例如，在香港特別行政區 訴 唐綽謙及其他人(西九龍裁判法院刑事案件 2022 年第 923 號)一案中，一名被告自稱懂得進行以兔子或其他小動物的生命作祭獻的巫術儀式。他利用這些動物為三名同為被告的顧客進行獻祭儀式，宣稱可改善他們的人際關係。四名被告被控九項“殘酷對待動物”罪。最終，自稱懂巫術的被告被判入更生中心，而另外三名被告各判處 120 小時社會服務令。

隨着“一國兩制”在香港全面貫徹落實，我們致力確保維護國家尊嚴至關重要。在香港特別行政區 訴 梁恩寧(觀塘裁判法院刑事案件 2022 年第 1220 號)一案中，某商場電視直播 2020 年東京奧運會香港劍擊代表張家朗先生奪得金牌的頒獎典禮，被告在國歌奏起期間上下揮動英殖時期的香港旗幟。根據本分科給予的法律意見，被告因侮辱國歌而被檢控，判處監禁三個月。

the Office of Privacy Commissioner for Personal Data continued to maintain close co-operation in the implementation of the new legislative provisions in order to deter disclosure of personal data without consent. In *HKSAR v Ip Chun-hin* WKCC 1638/2022, owing to a monetary dispute, the defendant, without obtaining consent from the two victims, posted the names, residential address and name of employers of the victims on two different chat groups of a social media platform. The mobile phone number of one of the victims was also posted on one of the groups. This Sub-division provided legal advice to the Office of the Privacy Commissioner for Personal Data resulting in prosecution being instituted against the defendant. After trial, the defendant was convicted of one count of “disclosing personal data without consent” in respect of one group chat, and one count of “disclosing personal data without consent, causing specified harm to the data subject or the family members of the data subject” in respect of the other group chat. This is the very first case in which a defendant was convicted after trial since the enactment of the doxxing provisions. As the verdict of the magistrate is currently under review pursuant to s.104 of the Magistrates Ordinance (Cap. 227), the defendant has not been sentenced yet.

This Sub-division also handled the prosecution of a child abuse case in “Children’s Residential Home of the Hong Kong Society for the Protection of Children” (“the Children’s Residential Home”) which was widely reported by the mass media. In *HKSAR v Lee Wai-man* KCCC 1883/2022, the defendant who was a childcare employee of the Children’s Residential Home was involved in multiple assaults on children aged between one to three, such as slapping the children on their heads and pushing the children onto the ground. The defendant was charged for nine counts of “ill-treatment on children by those who were in charge”. She pleaded not guilty to the charges. After trial, she was convicted of all the charges, and was sentenced to 15 months’ imprisonment.

The subject of animal neglect, abuse and cruelty continued to attract huge public concerns in 2022. In line with the changes and expectations of our society, we took a serious view on such cases and instituted prosecution on a number of cases involving cruelty to animals. For example, in *HKSAR v Tong Cheuk-him & Others* WKCC 923/2022, one of the defendants claimed to know witchcraft rituals that involved sacrificing the lives of rabbits or other small animals. He made use of these animals for dedication rituals for the three customers who were also defendants, claiming to improve their interpersonal relationships. The four defendants were charged with nine counts of “cruelty to animals”. In the end, the defendant who claimed to know witchcraft was sentenced to the rehabilitation centre while the other three defendants were each sentenced to 120 hours of community service order.



然而，並非所有案件都會進行全面檢控。在公義需要時，會循特別程序處理檢控，即在被告接受簽保以保證保持行為良好或保證在一段時間內（通常由法庭決定）遵守法紀的前提下，控方便不提證據起訴。此程序往往適用於涉及輕微罪行和被告過往沒有刑事記錄的案件，旨在達致防止犯罪和讓罪犯改過自新的目標。律師在考慮應否採用此程序以取代全面檢控時，會按照《檢控守則》訂明的指引顧及所有相關事宜，包括罪行的嚴重性、罪犯對有關罪行的態度、定罪可能帶來的刑罰、受害者的意見及公眾利益。2022年，本分科藉此程序處理的案件共 2,722 宗，而 2021 年則有 2,760 宗。

本分科的律師亦負責處理由控方就裁判法院案件提出的覆核及上訴。他們就是否根據《裁判官條例》(第 227 章)第 104 條對裁判官的決定、裁決、命令或判刑提出覆核，以及是否根據同一條例第 105 條以案件呈述方式提出上訴，提供法律指引。只有經慎重考慮後，並且繫記只有在必要及合乎公義和公眾利益的情況下，或涉及重要法律觀點而須由上級法院釐清時，他們才會決定提出覆核或向原訟法庭提出上訴。本分科的檢控人員在 2022 年以案件呈述方式提出九宗上訴，其中一宗獲判得直，八宗仍在進行中。覆核申請有 14 宗，其中十宗獲判得

With the full implementation of “One Country Two Systems” in Hong Kong, it is of utmost importance that we ensure efforts in protecting the dignity of our country. In *HKSAR v Leung Yan-ling Paula* KTCC 1220/2022, the defendant waved a British colonial Hong Kong flag up and down in a shopping mall while the National Anthem was being played from a live television broadcast of the medal presentation ceremony of Hong Kong fencing representative, Mr Cheung Ka-long who had won a gold medal in the Tokyo 2020 Olympic Games. On legal advice by our Sub-division, prosecution against the defendant was instituted for insulting the National Anthem and he was sentenced to three months’ imprisonment.

Not all cases are prosecuted to the full length. Where justice demands, a prosecution is disposed of by way of a special procedure in which the Prosecution offer no evidence upon the defendant accepting to be bound over to be of good behaviour or to keep the peace for a period of time usually decided by the court. Such a procedure is often appropriate for cases involving minor offences and defendants with no prior criminal record. It aims to serve the ends of preventive justice and rehabilitation of the offender. In considering whether such a procedure should be adopted in lieu of a full prosecution, counsel would take into account all the relevant matters including the seriousness of the offence(s), the attitude of the offender towards the offence, the likely penalty upon a conviction, the views of the victim and the public interests in accordance with the guidance set out in the Prosecution Code. In 2022, a total of 2,722 cases in this Sub-division were disposed of by way of this procedure, comparing to 2,760 cases in 2021.

Counsel of this Sub-division are also responsible for reviews and appeals lodged by the Prosecution arising from cases in the Magistrates’ Courts. They advise on whether or not to seek a review under s.104 of the Magistrates Ordinance Cap. 227 against a magistrate’s decision, verdict, order or sentence, and whether or not to lodge an appeal by way of case stated under s.105 of the same ordinance. The decision to review or appeal to the Court of First Instance will only be made after careful consideration, bearing in mind that it should only be made where it is necessary and justice and the public interests so demand, or where an important point of law is involved that requires clarification by the higher court. In 2022, our prosecutors initiated nine appeals by way of case stated of which one was allowed and eight are still in progress. There were also 14 applications to review of which 10 were allowed and four were dismissed. Some of our successful s.104 reviews include:

直，四宗被駁回。根據第 104 條提出的一些成功覆核案件包括：

在香港特別行政區 訴 林嘉樂 (屯門裁判法院刑事案件 2021 年第 2128 號) 一案中，被告是一名社工，竄改 22 張醫生證明書，從而獲取相當於港幣 252,199.57 元的 173 天有薪假期。她又使用偽造的“義工證書”欺騙她的僱主，藉擔任“親職輔導員”約六個月以賺取每月港幣 46,655 元的額外薪酬。被告承認 23 項《刑事罪行條例》(第 200 章)第 73 條下的“使用虛假文書”控罪，被裁定罪名成立，判處監禁共六個月，緩刑三年。經覆核刑罰後，裁判官判處即時監禁八個月取代緩刑。

在香港特別行政區 訴 袁壽祿 (粉嶺裁判法院刑事案件 2021 年第 1469 號) 一案中，被告的公共小型巴士在一個下雨的晚上撞倒一名騎單車人士，導致該人因身體多處創傷而死。調查發現死者的單車當時在該公共小型巴士前約十輛私家車的距離行駛，司機應可察覺。被告承認“危險駕駛引致他人死亡”罪，被裁定罪名成立，法庭原判處被告監禁三個月，取消駕駛資格五年，並命令被告須於取消駕駛資格的最後三個月內修習駕駛改進課程。經覆核後，裁判官將監禁刑期增加至四個月。

在香港特別行政區 訴 陳錦鴻 (沙田裁判法院刑事案件 2022 年第 913 號) 一案中，被告與女友在餐廳晚飯時發生爭執。餐廳內一組顧客怪責被告及其女友造成滋擾，遂與被告發生爭吵和肢體衝突。被告其後前往寓所攜菜刀返回餐廳，當發現餐廳已關門後，被告把菜刀棄置於草叢。被告承認《公安條例》(第 245 章)第 33 條下的“管有攻擊性武器並有所意圖”罪，原被判處 120 小時社會服務令。經覆核後，裁判官改判監禁六個月。

在香港特別行政區 訴 戚福晉 (西九龍裁判法院刑事案件 2021 年第 2148 號) 一案中，被告在港鐵車廂中未經同意而捏一名 21 歲女學生的左邊臀部。他經審訊後被裁定“猥褻侵犯”罪罪名成立，被判處附有特別條件的感化令，為期 24 個月。控方提出覆核刑罰的申請，裁判官其後撤銷該感化令，並判處被告監禁七天。

In *HKSAR v Lam Ka-lok* TMCC 2128/2021, the defendant, a social worker, had falsified 22 pieces of medical certificates for 173 days' paid leave amounting to HK\$252,199.57. She further used a forged "Certificate of Volunteer" to deceive her employer so that she could earn extra remuneration in the sum of HK\$46,655 per month by working as a "Co-parenting Counsellor" for about six months. She was convicted, on her own pleas, of 23 counts of "using a false instrument" under s.73 of the Crimes Ordinance Cap. 200 and sentenced to a total of six months' imprisonment suspended for three years. On review of sentence, the magistrate imposed an immediate custodial term of eight months' imprisonment in lieu of the suspended sentence.

In *HKSAR v Yuen Sau-luk* FLCC 1469/2021, the defendant's public light bus knocked down a cyclist on a rainy night, as a result of which the cyclist died of multiple traumatic injuries. Investigation revealed that the deceased's bicycle could have been observed when it was travelling ahead of the public light bus about 10 private-car length away. The defendant who was convicted, on his own plea, of "dangerous driving causing death" was originally sentenced to three months' imprisonment, disqualified from driving for five years, and ordered to attend a driving improvement course within the last three months of disqualification. Upon review, the magistrate increased the prison term to four months' imprisonment.

In *HKSAR v Chan Kam-hung* STCC 913/2022, the defendant had a dispute with his girlfriend while having dinner at a restaurant. A group of customers at the restaurant blamed the defendant and his girlfriend for causing nuisance, which resulted in arguments and physical confrontation with the defendant. The defendant then went to his own apartment, grabbed a cleaver and returned to the restaurant with it. Upon discovering that the restaurant had closed, he threw the cleaver into the bush. The defendant who pleaded guilty to "possession of an offensive weapon with intent" under s.33 of the Public Order Ordinance Cap. 245 was initially ordered to perform 120 hours' community service. After review, the magistrate sentenced him to six months' imprisonment instead.

In *HKSAR v Chik Fuk-chun* WKCC 2148/2021, the defendant squeezed a 21-year-old female student's left buttock without her consent on a MTR train. He was convicted, after trial, of "indecent assault" and sentenced to 24 months' probation order with special conditions attached. On an application to review the sentence, the magistrate discharged the probation order and sentenced the defendant to seven days' imprisonment.

下文載述香港海關其他值得探討的案件：

香港特別行政區 訴 劉得龍及另一人 (區院刑事案件 2020 年第 924 號) 一案涉及《商品說明條例》(第 362 章)所禁止的具威嚇性的營業行為。第一和第二被告是一間健身中心的銷售員，共同被控一項“串謀就消費者作出具威嚇性的營業行為”罪及兩項“詐騙”罪。受害人最初被一名銷售員假借問卷調查在街上被兜搭。在其後兩個多月期間，第一和第二被告促使受害人報名及付款參加該健身中心的會員計劃和 400 節私人教練健身課，以及購買數件被指稱為為受害人度身訂造的健身器材。為隱瞞上述交易，第一和第二被告指示受害人以現金或百老匯禮物卡付款。受害人先受全額退款所引誘，其後則被威脅他須負上法律責任和遭受監禁。第一和第二被告得知受害人耗盡積蓄後，更着受害人向不同財務機構借貸多筆大額款項。及至受害人父親偶然發現還款通知書，這宗詐騙案始被揭發。受害人在整段期間飽受精神壓力。第一和第二被告覷準受害人因患有自閉症和亞氏保加症而易受哄騙，騙取合共超過港幣 80 萬元。第一被告在認罪後被定罪，判處監禁共 21 個月零 27 天；至於第二被告則因出現新證據對其有否參與犯案存疑而獲不提證供起訴撤銷控罪。

在香港特別行政區 訴 伍嘉俊 (第一被告) 及伍國和 (第二被告) (粉嶺裁判法院刑事案件 2021 年第 1480 號) 一案中，一家二手車行接收了案中受爭議的日產 Elgrand 2.5 Highway Star 汽車 (該車輛)，而第一和第二被告分別是該車行的銷售員和經理。2019 年 11 月 24 日，受害人向第一被告查詢，後者遂發送一幅照片，顯示該車輛的里程錶讀數為 62,599 公里。受害人其後經第一被告購買該車輛，及後發現該車輛在 2017 年 1 月所記錄的里數已達 87,564 公里，而第二被告曾干擾里程錶。第一和第二被告被控“供應已應用虛假商品說明的貨品”罪，第二被告則被加控“將虛假商品說明應用於貨品”罪。經審訊後，第一被告獲裁定無罪；第二被告則被裁定兩項罪名成立，判處監禁三個月零兩星期。

In addition, below are examples of other interesting cases of the Customs and Excise Department:

HKSAR v Lau Tak-lung and another DCCC 924/2020 is a case concerning aggressive commercial practices under the Trade Description Ordinance Cap. 362. D1 and D2 were salesmen of a fitness center, and were jointly charged with one count of “conspiracy to engage in relation to a consumer in a commercial practice that is aggressive” and two counts of “fraud”. The victim was first picked up on the street by a salesman under the façade of a survey. Afterwards, throughout a period of over two months, D1 and D2 caused the victim to enroll in and pay for a membership plan and 400 personal training sessions at the fitness center, as well as several fitness equipment allegedly tailor-made for him. To conceal the transactions, D1 and D2 instructed the victim to make payment either by cash or by Broadway gift cards. The victim was first subject to inducement of full refunds, then subsequently threats of legal liability and imprisonment. Upon realizing the victim had no more savings, D1 and D2 even instructed the victim to obtain substantial loans from various financial institutions. It was only upon the chance discovery of loan repayment notices by the victim’s father that the fraud was discovered. Throughout the entire period, the victim suffered from tremendous mental stress. D1 and D2 preyed on the victim’s vulnerability as a patient of autism and Asperger’s Syndrome, and deceptively obtained over HK\$800,000 in total. D1 was convicted upon his own plea and was sentenced to a total term of imprisonment of 21 months and 27 days while the Prosecution offered no evidence against D2 in respect of the Charges when new evidence casting doubts on his involvement was uncovered.

In *HKSAR v Ng Ka-chun (D1) and Ng Kwok-wo (D2)* FLCC 1480/2021, D1 was a salesperson while D2 was a shop manager of a second hand car trading business receiving the Nissan Elgrand 2.5 Highway Star (“the Vehicle”) in issue. On 24 November 2019, the victim made queries with D1 who sent a photo indicating that the odometer reading of the Vehicle was 62,599 km. The victim purchased the Vehicle subsequently through D1. Later, it was discovered that the recorded mileage of the Vehicle in January 2017 was already 87,564 km and the odometer had been tampered with by D2. D1 and D2 were charged with “supplying goods to which a false trade description is applied” and D2 was further charged with “applying a false trade description to goods”. After trial, D1 was acquitted. D2 was convicted of both charges and was sentenced to imprisonment of three months and two weeks.

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、兩個部門檢控 / 人權組，以及行政及支援組別組成，負責的案件範疇多元化。

Being responsible for a diverse portfolio of cases, Sub-division II comprises the Office of the Director of Public Prosecutions, the Proceeds of Crime Section, the two Departmental Prosecutions / Human Rights Sections and the Administration and Support Units.



2022年，2019冠狀病毒病疫情持續肆虐本港，分科內律師一如既往悉力處理與抗疫相關的法律工作，包括就有關的執法問題向政府決策局和執法機關提供法律指引，以及在刑事法庭處理相關審訊和上訴案件的檢控工作。除了與2019冠狀病毒病相關的事宜外，分科內律師也為涉及犯罪得益和部門傳票的案件和上訴案件提供法律指引並出庭檢控。

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，職責涵蓋所有行政和管理事宜，以及科內的政策發展工作。專員辦公室的律師所須處理的主要工作範疇如下。

管理組

專員辦公室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。專員辦公室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。

2022年，商業罪案、詐騙及性罪行等複雜敏感案件的數目仍然偏高。專員辦公室格外謹慎，任用合適且經驗豐富的律師處理此類案件，以確保刑事檢控科不負所望，保持高度專業的服務水平。

專員辦公室調派律師時，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

專員辦公室的律師就多個範疇的政策問題，尤其是擬訂新法例和修訂現行法例所產生的檢控政策相關問題，向政府決策局及部門提供法律意見。本組在2022年處理過多項擬議法例，重要例子包括：

In 2022, the COVID-19 epidemic persisted in Hong Kong and counsel of the Sub-division continued to be actively engaged in legal work in its combat, which included rendering legal advice to Government bureaux and law enforcement agencies on related enforcement issues and prosecuting the resultant trials and appeals in the criminal courts. Apart from COVID-19 related matters, our counsel also advised on and prosecuted cases and appeals involving proceeds of crime and departmental summonses.

Highlights of some of the work of the different Sections of the Sub-division are set out 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. Its responsibilities cover all administrative and management matters as well as policy development of the Division. Some of the major areas of work handled by Counsel in the ODPP are set out below.

Management Unit

One of the primary duties of the ODPP is to assign court cases to suitable in-house prosecutors or fiat counsel, and to refer requests for legal advice to prosecutors having the most appropriate expertise in dealing with them. The ODPP monitors and supervises the assignment of duties carefully and sensitively to ensure that cases would be handled properly, efficiently and professionally.

In 2022, the number of complex and sensitive cases such as commercial crime, deception and sexual offences, remained high. The ODPP exercised particular care in engaging suitable and experienced counsel to handle these cases to ensure that the high level of professional competency expected of the Division was maintained.

The ODPP 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

Counsel in the ODPP give advice to Government bureaux and departments on wide-ranging policy issues, in particular issues relating to prosecution policy arising from proposed new

- (1) 根據《預防及控制疾病條例》(第 599 章)訂立的附屬法例；
- (2) 《2022 年道路交通(修訂)(自動駕駛車輛)條例草案》；
- (3) 《2022 年發展(城市規劃、土地及工程)(雜項修訂)條例草案》；
- (4) 《2022 年生死登記(修訂)條例草案》；以及
- (5) 提高違反職業安全與健康相關法例罰則的立法建議。

培訓組

專員辦公室負責為刑事檢控科及專責檢控工作的執法機關提供法律培訓。

2022 年，為了保持社交距離，培訓活動以虛擬或混合會議形式舉行。本組在年內舉辦了多項內部及外部培訓活動，包括為見習律政人員舉辦兩班為期 12 周的刑事訟辯課程，以及為律師舉辦特別專題講座。本組也為多個政府部門及自主機構的檢控人員舉辦了為期 14 天的檢控人員培訓課程，而在虛擬技術的協助下，課程的參與人數較以往增加三倍。本組律師也為其他政府部門提供培訓和協助。整體而言，虛擬會議技術在確保社交距離得以保持的同時，也切合了培訓需要。

傳媒組

刑事檢控科明白傳媒適時準確報道刑事案件的重要性。2022 年，專員辦公室繼續依據《檢控守則》所訂定的原則，向傳媒提供準確和最新的刑事案件資訊。這些資訊包括早已在公開聆訊中展示的事宜、已定將進行的事宜和其他一般公開資料。這不但可確保公眾知悉法律程序的發展，也有助提高刑事司法制度的透明度和問責性。在應對傳媒查詢時，專員辦公室致力在滿足社會對刑事案件發展的關注與保障相關各方的私隱權之間取得平衡。

legislation and amendments to existing legislation. Notable proposed legislation handled in 2022 include:

- (1) Subsidiary legislation made under the Prevention and Control of Disease Ordinance (Cap. 599);
- (2) Road Traffic (Amendment) (Autonomous Vehicles) Bill 2022;
- (3) Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022;
- (4) Births and Deaths Registration (Amendment) Bill 2022; and
- (5) Legislative proposal to raise the penalties for contraventions of occupational safety and health-related legislations.

Training Unit

The ODPP is responsible for providing legal training to the Division and law enforcement agencies responsible for prosecution work.

In 2022, in view of the need to maintain social distancing, trainings were conducted virtually or by way of hybrid meetings. Both internal and external trainings were conducted throughout the year, including two rounds of the 12-week Criminal Advocacy Course for legal trainees, and ad-hoc lectures on various topics for counsel. The 14-day Departmental Prosecutors Training Course was also held for prosecutors in various Government departments and autonomous bodies, with virtual technology allowing for three times more participants than before. Counsel also provided training and assistance to other Government departments. Overall, virtual meeting technology allowed for training needs to be met while maintaining social distancing.

Media Unit

The Division recognises the importance of accurate and timely reporting of criminal cases in the media. In 2022, the ODPP continued to provide accurate and updated information about criminal cases to the media in accordance with the principles as set out in the Prosecution Code. Such information included matters already presented in open court, the settled future course of events and other general open information. This not only helps to ensure that the public is informed about the development of legal proceedings, but also helps to promote transparency and accountability in the criminal justice system. In addressing the enquiries made by the media, the ODPP strives to balance the community's interest in the development of criminal cases against the relevant parties' rights to privacy.

投訴及意見

專員辦公室負責處理和答覆公眾和非政府機構對刑事檢控科的投訴和查詢。專員辦公室會就所有投訴展開調查並確保採取適當跟進行動，按個別個案公平公正地處理每宗個案所提事項。專員辦公室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。

2022 年，專員辦公室處理共 376 宗有關刑事檢控科檢控工作的投訴和查詢。

犯罪得益組

香港作為國際金融中心和開放自由的經濟體，面對潛在的洗黑錢活動風險。為保護金融體系免遭犯罪分子利用，香港設有完善的法律和體制架構，以打擊洗黑錢及恐怖分子資金籌集活動。健全的限制和沒收機制至關重要，可迫使歹徒交出非法收益、防止他們把犯罪得益用於其他犯罪活動，並起阻嚇作用，以防他人鋌而走險干犯同類罪行。

犯罪得益組致力執行香港在追討資產及打擊洗黑錢方面的法例。2022 年，被限制、沒收和追討的犯罪得益非常龐大。本組成功取得合共 71 項限制令和 25 項沒收令。被限制的可變現財產達港幣 668,753,923.82 元，而被法院頒令沒收的犯罪得益總額為港幣 156,424,839.18 元。經變現並撥入政府一般收入的款額達港幣 70,538,140.62 元。下文概述經本組處理的一些值得注意的案件。

在高院雜項案件 2021 年第 1842 號及刑事雜項案件 2022 年第 424 號中，一家本地公司被指通過據稱為香港近期社會動盪中的示威者提供經濟支援的籌款活動，清洗超過港幣 8,000 萬元的款項。帳戶持有人被發現通過銀行轉帳收集公眾捐款後，使用一大部分的存款作個人用途。法庭就與該筆合共約港幣 6,200 萬元的結餘存款（包括 16 張銀行本票）有關的公司銀行帳戶及其他個人帳戶發出限制令。帳戶持有人潛逃英國超過一年後，香港特區政府申請把

Complaints and Feedback

The ODPP is responsible for handling complaints and answering enquiries from the general public and non-governmental institutional bodies concerning the Division. It investigates all complaints and ensures that appropriate follow-up actions are taken. In doing so, the ODPP adopts a case-sensitive approach to address concerns raised in individual cases in a fair and impartial manner. Actions taken by the ODPP may 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 2022, the ODPP handled a total of 376 cases of complaints and enquiries about the prosecutorial work of the Division.

Proceeds of Crime Section

As an international financial centre with an open and free economy, Hong Kong is exposed to potential money laundering activities. To protect the financial system from being exploited by criminals, Hong Kong has a well-established legal and institutional framework for combating money laundering and terrorist financing. A robust system of restraint and confiscation is essential in disgorging the criminals of their illicit gains, preventing crime proceeds from funding further criminal activities and deterring others who might venture to commit similar crimes.

The Proceeds of Crime Section strives for the enforcement of asset recovery and anti-money laundering laws in Hong Kong. In 2022, a significant amount of proceeds of crime was restrained and subsequently confiscated and recovered. A total of 71 restraint orders and 25 confiscation orders were successfully obtained. HK\$668,753,923.82 worth of realisable property was restrained, and the total amount of crime proceeds ordered to be confiscated was HK\$156,424,839.18. A total of HK\$70,538,140.62 was realised and paid to the general revenue. Some notable cases handled by the Section are summarised below.

In HCMP 1842/2021 and HCCP 424/2022, a local company was alleged to have laundered money of more than HK\$80 million via a fund-raising activity that purportedly gave financial assistance to protestors in the recent social unrest in Hong Kong. After having solicited public donations via bank transfer, account holders were found to have used a substantial part of the deposits for personal use. A restraint order was made against the company bank account and other personal accounts in respect of the credit balance of around HK\$62 million in total (including 16 cashier orders). After the account holders had absconded to the United

被限制的款項全數沒收，而法庭則作出命令，批准該沒收申請。

在香港特別行政區 訴 *Wong Chok-kwan* 及另一人 [2018] HKDC 310 一案中，第一及第二被告為一對夫婦，經審訊後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。第一及第二被告被發現在七年間洗黑錢的總金額分別為港幣 148,213,048.42 元和港幣 632,855,485.86 元。法庭向第一被告發出沒收令，沒收港幣 30,000 元款項；以及向第二被告發出沒收令，沒收港幣 1,820 萬元款項。

在高院雜項案件 2020 年第 51 號一案中，一間德國公司因被詐騙而把合共約港幣 1,620 萬元匯入由一間公司持有的香港銀行帳戶，該帳戶由一名內地人（答辯人）操控。調查發現，該帳戶在 2015 年 9 月至 12 月期間的存入和匯出款項總額超過港幣 30 億元。該帳戶被發現用作洗黑錢。德國公司全面追討損失後，帳戶內餘下逾港幣 900 萬元款項經潛逃者法律程序被沒收。

在高院雜項案件 2021 年第 209 號一案中，一間美國公司因被詐騙而把合共相當於港幣 776,227 元轉帳至由一間公司（答辯人）持有的香港銀行帳戶。法庭就帳戶內港幣 172,618 元的貸方結餘向該公司（答辯人）發出限制令。其後，該公司（答辯人）被公司註冊處除名而解散。藉施行《公司條例》（第 622 章）第 752(1) 條，在緊接解散前歸屬該公司或以信託形式為該公司持有的所有財產及權利，即屬無主財物並歸屬政府。因此，銀行把有關帳戶的貸方結餘轉帳至公司註冊處的帳戶，以便隨後撥入政府一般收入。

在律政司司長 訴 *Ding Shaoxiong* [2022] HKCFI 3379 一案中，一名內地人（答辯人）在香港開設公司銀行帳戶，收取合共 1.2 億美元來歷不明的款項，包括投資詐騙的得益。他在 2016 年 8 月最後一次離開香港後再沒回港。在沒收聆訊期間，答辯人通過其法律代表辯稱他從來沒有潛逃，也無可能被裁定洗黑錢罪成。法庭不接納上述論點，並就逾 210 萬美元的款項發出沒收令。

Kingdom for more than a year, HKSAR Government applied to confiscate the restrained sum in full and the Court made an order in terms granting the confiscation.

In *HKSAR v Wong Chok-kwan & Another* [2018] HKDC 310, D1 and D2 were a married couple and were convicted after trial of the offences of dealing with property known or believed to represent proceeds of indictable offence. D1 was found to have laundered a total sum of HK\$148,213,048.42 and D2 a total sum of HK\$632,855,485.86 over a period of seven years. The Court made a confiscation order against D1 in the amount of HK\$30,000, and a confiscation order against D2 in the amount of HK\$18.2 million.

In HCMP 51/2020, a German company was defrauded into remitting a total amount of approximately HK\$16.2 million into a bank account in Hong Kong held by a company which was subject to the control of a Mainlander respondent. Investigation revealed that a total amount of over HK\$3 billion was deposited in and withdrawn from the account between September and December 2015. The account was found to have been used for money laundering. After the German company fully recovered its loss, the remaining funds standing in the account of over HK\$9 million was confiscated by way of the absconder proceedings.

In HCMP 209/2021, a US company was defrauded into transferring a total amount equivalent to HK\$776,227 to a bank account in Hong Kong held by a company respondent. A restraint order was made against the company respondent in respect of the credit balance of HK\$172,618 in the account. Later the company respondent was dissolved by the Companies Registry's striking off. By operation of section 752(1) of the Companies Ordinance (Cap. 622), every property and right vested in or held on trust for the company immediately before the dissolution is vested in the HKSAR Government as bona vacantia. Therefore the bank transferred the credit balance in the account to the Companies Registry's account for onward transfer to the general revenue.

In *Secretary for Justice v Ding Shaoxiong* [2022] HKCFI 3379, a Mainlander respondent opened a corporate bank account in Hong Kong and received a total of US\$120 million of unexplainable deposits including proceeds of an investment fraud. He last left Hong Kong in August 2016 and never returned. During the confiscation hearing, the respondent contended via his legal representative that he had never absconded and could not have been convicted of money laundering. The Court rejected those contentions and made a confiscation order in the amount of over US\$2.1 million.

In 2022, the Section continued to cooperate with overseas counterparts in the joint combat against money laundering



2022 年，本組繼續與海外同業合作，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。該等組織是跨政府組織，致力就打擊洗黑錢及恐怖分子資金籌集活動 (AML/CTF) 的政策提出建議，並確保其成員有效執行有關國際標準。為加深本組對國際標準和評估方法的了解，檢控官黎健禧先生參加了 APG 於 2022 年 8 月舉行為期五天的評估人員線上精修培訓工作坊。黎先生在工作坊中獲正面評價，並取得 FATF 和 APG 評估人員資格。

為加強控方與相關機構在打擊洗黑錢及金融罪案方面的合作，本組人員致力在香港宣傳打擊洗黑錢及恐怖分子資金籌集活動 (AML/CTF) 的知識和經驗。署理助理刑事檢控專員傅悅耳女士及檢控官劉德澤先生分別於 2022 年 7 月及 11 月主持由香港律師會舉辦的打擊洗黑錢及恐怖分子資金籌集活動 (AML/CTF) 網絡研討會，有關活動廣受法律執業者歡迎。2022 年 8 月，劉先生在香港警務處舉辦的“經驗分享—限制和沒收法律程序”活動中發言。

2022 年 12 月，傅女士為執法機關人員舉辦兩場關於限制和沒收法律程序及資產追討的研討會。

worldwide. Hong Kong is an active member of the Financial Action Task Force (“FATF”) and the Asia/Pacific Group on Money Laundering (“APG”), being the inter-government bodies dedicated to recommending anti-money laundering and counter-terrorist financing (“AML / CTF”) policies and ensuring members to implement the relevant international standards effectively. To enrich the Section’s understanding of the international standards and the assessment methodology, Public Prosecutor Mr Lucas Lai attended the virtual five-day intensive Assessor Training Workshop held by the APG in August 2022. Mr Lai received positive feedbacks in the Workshop and attained the qualification as a FATF and APG assessor.

With a view to enhancing the joint efforts among the Prosecution and the relevant bodies to combat money laundering and financial crimes, members of the Section contributed to the dissemination of the knowledge and experience on AML / CTF in Hong Kong. In July and November 2022, Assistant Director of Public Prosecutions (Ag.) Ms Betty Fu and Public Prosecutor Mr Douglas Lau respectively delivered webinars on AML / CTF organised by the Law Society of Hong Kong, which were well-received by legal practitioners. In August 2022, Mr Lau spoke at “Experience Sharing – Restraint and Confiscation Proceedings” held by the Hong Kong Police Force.

In December 2022, Ms Fu delivered two seminars on restraint and confiscation proceedings and asset recovery to the officers of law enforcement agencies.

部門檢控 / 人權 A 組

部門檢控 / 人權 A 組及 B 組於 2022 年成立，共同處理以前兩個獨立組別（即人權組和部門檢控組）的職責範圍內的各項工作。

2022 年，人權 A 組的主要職責包括為逾 30 個部門執法機關提供法律指引，該等部門包括屋宇署、食物環境衛生署、地政總署、強制性公積金計劃管理局和社會福利署。我們的職責也包括就各級法院的審訊和上訴及司法覆核等刑事事宜中出現的《基本法》和人權問題，從控方角度提供法律指引。

本組在 2022 年為 1,373 宗案件提供法律指引，當中大部分屬高度敏感和備受傳媒關注的案件。本組在該年也面對一些新挑戰，包括處理新法例及罪行的制定和實施工作，例如《業主與租客（綜合）條例》（第 7 章）第 IVA 部涉及分間單位的規管租賃的法例及罪行，以及把電子煙等另類吸煙產品納入《吸煙（公眾衛生）條例》（第 371 章）的規管範圍，而規管小型無人機（例如航拍機）的牌照和使用的《小型無人機令》（第 448G 章），則最備受關注。

環顧部門的各項檢控工作，2022 年本組的主要工作範疇和挑戰都與 2019 冠狀病毒病疫情有關。本組處理其中一宗與疫情有關的重要上訴案件是香港特別行政區訴余俊穎 [2022] HKCFI 3209。根據《預防及控制疾病（規定及指示）（業務及處所）規例》（第 599F 章）的指示，“派對房間”作為表列處所須予“關閉”，該上訴案件的爭議點為“派對房間”在“關閉”期間可否舉行私人聚會。法庭裁定，由於立法機關的明確目的是禁止“派對房間”在獲令“關閉”期間舉行任何聚會，而不論聚會屬朋友間的私人聚會抑或招待付費市民的聚會，因此有關聚會是禁止舉行的。法庭也同意，既然“派對房間”的定義為“設置或擬設置供租用作舉行社交聚會的處所（一般稱為派對房間）”，故無須證明處所在案發時“正供租用”作舉行社交聚會，而僅須證明處所設置或擬設置供租用作派對房間。

Departmental Prosecutions / Human Rights Section (A)

Departmental Prosecutions / Human Rights Section (A) was established in 2022 together with its sister Section (B) to share the portfolios previously handled by two separate sections, namely the Human Rights Section and the Departmental Prosecutions Section.

The major responsibilities of Section (A) in 2022 included giving legal advices to an array of over 30 departmental law enforcement agencies including the Buildings Department, Food and Environmental Hygiene Department, Lands Department, Mandatory Provident Fund Scheme Authority, and Social Welfare Department. Our responsibilities also include giving legal advice from the prosecution's perspective on the Basic Law and human rights issues arising in criminal matters including trials and appeals in all level of courts as well as judicial reviews.

The Section provided advice in 1,373 cases in 2022. Many of these cases were highly sensitive and had attracted much of the media's attention. 2022 also saw some new challenges including the enactment and commencement of new laws and offences such as those under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) concerning regulated tenancies involving subdivided units; and inclusion of alternative smoking products such as e-cigarettes for regulations under the Smoking (Public Health) Ordinance (Cap. 371). Of particular interest was the Small Unmanned Aircraft Order (Cap. 448G) which regulates the licensing and use of small unmanned aircrafts such as drones.

Under the departmental prosecutions portfolio, the major area of work and challenge in 2022 concerned the COVID-19 pandemic. One of the significant appeals relating to the pandemic handled by the Section was *HKSAR v Yu Chun-wing* [2022] HKCFI 3209. This appeal concerned whether private gatherings inside a “party room” was permissible when it, as scheduled premises, was directed to be “closed” under Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F). The Court held that such gatherings were not permissible because the legislature clearly intended to prohibit any gathering inside a “party room” when it is ordered to be “closed”, whether the gatherings are of a private nature amongst friends only or for paying members of the public. The Court also agreed that “party room”, defined as “premises (commonly known as party room) that are maintained or intended to be maintained for hire for holding social gatherings”, does not require proof that the premises were “under hire” for holding social gatherings at the time of the offence.

本組律師也負責就審訊案件提出檢控，當中也包括一宗與2019冠狀病毒病疫情相關的案件，即香港特別行政區訴黃豆龍（第一被告）及劉諾宏（第二被告）（東區裁判法院刑事案件2022年第288號）案。案中的第一和第二被告為機艙服務員，在2021年聖誕節期間完成工作後返港。二人抵港後各獲發醫學監察通知書，規定他們須自我隔離作醫學監察，除必要的活動外，也須留在家中，直至他們抵港後第三天進行的聚合酶連鎖反應檢測得出陰性結果為止。然而，第一被告卻在抵港後第二天（即第二被告抵港後首日）到訪第二被告的住所送上聖誕禮物。第二被告在第一被告到訪後送他到巴士站，再到商場領取包裹。兩日後，第二被告在沒有聚合酶連鎖反應檢測陰性結果的情況下與父親和朋友到餐廳用膳。第一和第二被告其後確診帶有2019冠狀病毒病Omicron變異病毒株。流行病學調查發現二人觸發香港爆發第五波2019冠狀病毒病疫情。第一和第二被告經審訊後被裁定“沒有遵守醫學監察條件”罪罪成，違反《預防及控制疾病規例》（第599A章）第15條，各被判監八星期。

此外，本組在人權範疇下處理多宗涉及人權事宜的案件，當中包括出席香港特別行政區訴楊超敏（被告）（西九龍裁判法院傳票案件2021年第11787號）一案的審訊。教育局接獲投訴指東涌一個住宅房產用作非註冊學校用途後，根據《教育條例》（第279章）第81A(1)條派出五名學校督學到訪該房產調查。被告為該房產佔用人，她拒絕開門，隨後帶同十名六至八歲的兒童離開，並告訴他們不要回答督學的任何提問。被告干犯“妨礙學校督學視察房產”罪，違反第279章第87(1)(ha)條，因而受審。被告在審訊中質疑督學無需手令而進入並視察房產的權力違憲，原因是被告根據《香港人權法案》第十四條和《基本法》第二十九條享有對私生活的保護的權利受到不相稱的侵擾。原審裁判官接納控方的論點，即無需手令而進入房產以視察非註冊學校的權力是為確保適當監督和管制學校的合法目的而設，對於學校註冊制度而言不可或缺；學校督學須在有“合理懷疑”有人犯罪的前提下方可行使上述權力並非象徵式或憑空想像的規定，而要求每當行使有關權力時均需手令也會妨礙調查工作；以及有關權力沒有超逾為達致合法目的

but only proof that the premises were maintained or intended to be maintained for hire as a party room.

Counsel of the Section also prosecuted cases for trial and one of which also concerned the COVID-19 pandemic, namely *HKSAR v Wong Yoon-loong (D1) & Lau Lok-wang Nilsson (D2)* ESCC 288/2022. In this case, D1 and D2 were flight attendants who returned to Hong Kong after duties over Christmas time in 2021. Upon their arrivals, a Notification of Medical Surveillance was issued to each of them, requiring them to undergo self-isolation for medical surveillance and stay at home unless for necessary activities and until there was a negative Polymerase Chain Reaction test result taken on the third day following their arrivals. However, on the second day following D1's arrival (which was the first day following D2's arrival), D1 visited D2's residence to give him a Christmas present. After D1's visit, D2 accompanied D1 to a bus stop and picked up a parcel at a mall. Two more days later, without a negative Polymerase Chain Reaction test result, D2 visited a restaurant with his father and a friend. D1 and D2 were subsequently confirmed to be carriers of the Omicron variant of the COVID-19 virus. Epidemiological investigation revealed that they triggered the fifth wave of COVID-19 outbreak in Hong Kong. After trial, D1 and D2 were convicted of the offence of "failing to observe medical surveillance conditions" contrary to section 15 of the Prevention and Control of Disease Regulation (Cap. 599A). They were each sentenced to eight weeks' imprisonment.

Under the human rights portfolio, the Section also handled cases involving human rights issues and one of which was a trial, namely *HKSAR v Yeung Chiu-man (D)* WKS 11787/2021. Five inspectors of schools of the Education Bureau visited a residential premises in Tung Chung to conduct an investigation pursuant to section 81A(1) of the Education Ordinance (Cap. 279) after receiving complaints that the premises was being used as an unregistered school. D, who was the occupier of the premises, refused to open the premises' door and subsequently led 10 children of six to eight years old to leave the premises and told them not to answer any question from the inspectors. D was tried for the offence of "obstructing inspectors of schools while carrying out inspection of premises" contrary to section 87(1)(ha) of Cap. 279. In the trial, D challenged that the powers to enter and conduct inspection by the inspectors without warrant were unconstitutional, as it was a disproportionate interference of her right of privacy protected under Article 14 of the Hong Kong Bill Of Rights and Article 29 of the Basic Law. The trial magistrate accepted the prosecution's argument that the power to enter premises for inspection of unregistered schools without warrant was integral to the school registration system which served the legitimate purpose of ensuring proper supervision and control of schools;

所需的程度，並有助在個人權利與社會利益之間取得公正平衡。裁判官因此裁定第 279 章第 81A(1) 條合憲。被告經審訊後被裁定罪名成立。

2022 年 5 月及 11 月，本組人員出席律政司舉辦的願景 2030 聚焦法治國際論壇及香港法律周 2022，在專題討論中探討如何鞏固法治作為香港賴以成功的基石，以及持份者及社會各界（尤其是年輕一代）可如何為維護香港的法治作出貢獻。

部門檢控 / 人權 B 組

部門檢控 / 人權 B 組就《預防及控制疾病條例》（第 599 章）相關案件及勞工處及入境事務處調查的案件提供法律指引。本組也從檢控角度就刑事事宜衍生的《基本法》及人權問題提供法律指引。2022 年，本組就 1,240 宗案件提供法律指引。

鑑於新型冠狀病毒疫情在 2022 年持續肆虐，本組與執法機關緊密合作，應對 2019 冠狀病毒病疫情。本組與相關執法機關恆常舉行會議，經常提供緊急法律指引。這些案件大多性質敏感，引起傳媒的關注。

在香港特別行政區 訴 香港童軍總會及其他人（九龍城裁判法院傳票案例 2021 年第 30502-30508 號）案中，在香港童軍中心一間餐廳舉行的一個宴會違反預防及控制疾病及羣組聚集限制的相關指示。餐廳經營者承認控罪，被罰款港幣 35,000 元。宴會組織者因參與受禁羣組聚集而須繳付定額罰款港幣 5,000 元。

本組也處理就裁判官的裁決提出的上訴和覆核案件，當中大多有深遠法律影響。本組負責的一些重要上訴案件現扼述如下。

在香港特別行政區 訴 郭永健及其他人 [2022] HKCFI 2525 一案中，各上訴人質疑《預防及控制疾病（禁止聚集）規例》（第 599G 章）（《規例》）違憲，原因是《規例》限制了集會自由的基本權利。法庭認為《規例》與維護公眾衛生這個合法目的有合理關聯，故裁定其符合相

and the requirement that the inspectors of school had “reasonable suspicion” of commission of any offence as a pre-requisite for exercising the said powers was not nominal or fanciful, and investigation would be hindered if a warrant was required on every occasion; and the powers were no more than necessary to achieve the legitimate aim and could achieve a fair balance between individual rights and societal interest. The magistrate therefore held that section 81A(1) of Cap. 279 is constitutional. D was convicted of the offence charged after trial.

In May and November 2022, members of the Section attended the Vision 2030 for Rule of Law International Symposium and the Hong Kong Legal Week 2022 organized by the Department with a special feature on how to uphold the rule of law as the bedrock of Hong Kong’s success, and how stakeholders as well as all sectors of the community especially the younger generation could contribute to safeguarding the rule of law in Hong Kong.

Departmental Prosecutions / Human Rights Section (B)

Departmental Prosecutions / Human Rights Section (B) provides legal advice on cases relating to the Prevention and Control of Disease Ordinance (Cap. 599) and cases investigated by the Labour Department and the Immigration Department. The Section also gives legal advice from the prosecutorial perspective on the Basic Law and human rights issues arising in criminal matters. In 2022, the Section provided advice in 1,240 cases.

As the coronavirus epidemic persisted in 2022, the Section continued to work closely with law enforcement agencies in combating the COVID-19 pandemic. Regular meetings were held with the relevant law enforcement agencies and legal advices were often given on urgent basis. Many of these cases were of sensitive nature and attracted media attention.

In *HKSAR v Scout Association of Hong Kong and Others* KCS 30502-30508/2021, a banquet which contravened the relevant directions for prevention and control of disease and restriction on group gathering was held at a restaurant at the Hong Kong Scout Centre. The restaurant’s operator was fined HK\$35,000 upon a guilty plea. The banquet’s organizer paid the fixed penalty of HK\$5,000 for participating in the prohibited group gathering.

The Section also handles appeals and reviews of magistrates’ determinations, many of which have significant legal implications. Some of the significant appeals under the Section’s purview are set out below.

稱驗證準則，並屬合憲。行政機關應獲給予寬鬆的酌情判斷餘地應對公眾衛生威脅，因此法院在評估禁止羣組聚集的相稱性時，應採用較接近“顯然缺乏合理基礎”的覆核準則。

在香港特別行政區 訴 張皓章 [2022] HKCFI 1757 一案中，法庭（就應否基於辯護理據屬瑣屑無聊和無理取鬧而另處附加罰款一事）斟酌了“瑣屑無聊和無理取鬧”的字眼在刑事罪行量刑及量刑原則中的涵義。法庭裁定，有關字眼應按其日常涵義詮釋，而原審裁判官是就此事作出裁決的最佳人選，當中可參考適用的民事法律原則。法庭也列出判刑裁判官在決定辯護理據是否屬瑣屑無聊或無理取鬧時應緊記的多項原則。

在香港特別行政區 訴 甄霽霖 [2022] HKCFI 3736 一案中，法庭斟酌了屋苑地下升降機大堂是否符合禁止進行羣組聚集的“公眾地方”的定義。法庭裁定，公眾地方須為公眾獲准以公眾人士身分進入的地方。

本組也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。《2022 年職業安全及職業健康法例（雜項修訂）條例草案》是本組在 2022 年曾審閱的條例草案之一，該條例草案旨在修訂相關條例及其附屬法例，以提高職業安全及健康罪行的罰則，加強阻嚇作用。

In *HKSAR v Kwok Wing-kin and Others* [2022] HKCFI 2525, the appellants argued that the Prevention and Control of Disease (Prohibition on Gathering) Regulation (Cap. 599G) (“Regulation”) was unconstitutional as it restricted the fundamental rights of freedom of assembly. In holding that the Regulation satisfies the proportionality test and is constitutional, the Court considered that the Regulation has a reasonable connection to the legitimate aim of maintenance of public health. A wide margin of appreciation to the executive authorities to deal with public health threats should be accorded, and hence the standard of review closer to “manifestly without reasonable foundation” should be adopted in assessing the proportionality of the prohibition of group gathering.

In *HKSAR v Chang Hoo-chang* [2022] HKCFI 1757, the meaning of “frivolous and vexatious” in the context of criminal sentencing and sentencing principles (on whether an additional penalty should be imposed on the basis of a frivolous and vexatious defence) were considered. The Court held that the terms should be interpreted according to their ordinary meanings, and that the trial magistrate is in the best position to rule on the matter and reference may be made to the applicable principles in civil law. The Court also set down various principles which the sentencing magistrate should bear in mind in deciding whether a defence is frivolous or vexatious.

In *HKSAR v Yan Pui-lam* [2022] HKCFI 3736, the issue as to whether the ground floor lift lobby of a housing estate falls within the definition of a “public place” for the purpose of a prohibited group gathering was considered. It was held that a public place must be a place where members of the public may be allowed access qua such members.

The Section also vetted and commented on bills and proposed legislative amendments from the criminal law and prosecutorial perspective. One of the bills considered by the Section in 2022 was the Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022 which sought to amend the relevant ordinances and their subsidiary legislations to increase the penalties for occupational safety and health offences so as to enhance their deterrent effect.

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（即原訟法庭和區域法院）審理的案件，從提供法律指引開始到跟進審訊、向上訴法庭及終審法院提出上訴，以至覆核刑罰及 / 或案件呈述。原訟法庭及區域法院轄下各設三個組別，分別為分科三第 1A、1B 及 1C 組，以及分科三第 2A、2B 及 2C 組。

Public Prosecutors in Sub-division III deal with cases to be tried in the Higher Courts, namely, the Court of First Instance ("CFI") and the District Court ("DC"), starting from advisory stage to trial, appeal to the Court of Appeal ("CA") and the Court of Final Appeal ("CFA"), review of sentence and/or case stated. There are respectively three sections under the CFI: section III(1)(A), (B) and (C) and under the DC: section III(2)(A), (B) and (C).



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分別審訊的刑事罪行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。此外，他們也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），而該六個組別中部分經驗豐富的律師則在各類性質敏感的刑事審訊中負責檢控。

近年，分科三處理的案件數量持續繁多。該分科在 2022 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 2022 年的工作範疇及一些備受關注的案件，現重點載述如下。

原訟法庭：分科三 第 1A、1B 及 1C 組

該三個組別的檢控官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）提供法律指引。他們負責就證據是否充分、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。檢控官亦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。

就交付到原訟法庭作判刑的案件，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。就交付到原訟法庭作審訊的案件，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，並與出席庭審的檢控人員緊密合作。

在 2022 年，交付原訟法庭的案件有 223 宗，其中 62 宗交付審訊，153 宗交付判刑。另有兩宗案件的被告根據《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；還有兩宗依據《區域法院條例》（第 336 章）第 77A(4) 條的移交令將案件

Public Prosecutors in both the Court of First Instance Advisory and District Court Advisory Sections are primarily responsible for advising law enforcement agencies on criminal offences to be tried in the CFI and in the DC respectively. 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. In addition, they handle appeals and other related matters at all levels of appellate courts except for magistracy appeals, while some experienced counsel in the six sections prosecute a broad range of sensitive criminal trials.

Caseload has consistently been heavy in recent years; year 2022 saw another boom in the amount of work handled by members of Sub-division III, who nonetheless strived to discharge their duties to the highest standard.

The areas of work of Sub-division III in 2022 are set out below where some notable cases are highlighted.

Court of First Instance: Sections III(1)(A), (B) & (C)

Public Prosecutors in these three sections advise on criminal matters to be dealt with in the CFI, such as homicide, rape, drug trafficking, kidnapping, robbery, etc. They would advise on the sufficiency of evidence, the appropriate charges to be laid and the proper venue of trial, ensuring that cases are properly prepared for trial. After giving legal 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.

For a case committed to the CFI for sentence, Public Prosecutors would prepare the paginated plea and sentence bundle and attend the sentencing hearing in the CFI. For a case committed to the CFI for trial, Public Prosecutors would deal with the preparation and filing of the indictment and lodging of the paginated committal bundle, and work closely with the trial prosecutors.

In 2022, 223 cases were committed to the CFI, of which 62 cases were committed for trial, and 153 cases were committed for sentence. In addition, two cases were 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 two cases were transferred from the DC to CFI for trial pursuant to an order of transfer made under section 77A(4) of the District Court Ordinance (Cap. 336). Further, four indictments were filed

由區域法院移交原訟法庭審訊。此外，有四份公訴書按上訴法院的重審令提交法庭存檔。

原訟法庭審理的一些重要案件如下：

- (1) 在香港特別行政區 訴 翟詠詩 [2022] HKCFI 1123 一案中，17 歲的女被告承認兩項無牌管有槍械及彈藥罪。被告承認的事實揭示，她受較其年長 10 年的性伴侶 (Stephen) 擺布，在家中收藏兩支操作正常的手槍及大量彈藥，並將其中一支手槍及部分彈藥轉交另一人。判刑前，女被告在獲豁免檢控的情況下指證 Stephen 及另一被告，二人被控串謀謀殺及串謀管有槍械及彈藥，而法庭認為女被告是誠實的證人。法庭依據香港特別行政區 訴 Tsiang On-yan [2019] 5 HKLRD 100 及 Z 訴 香港特別行政區 (2007) 10 HKCFAR 183 這兩宗案件，判處女被告監禁六年零六個月。
- (2) 在香港特別行政區 訴 劉越騰 [2022] HKCFI 2429 一案中，被告是內地的大學生，他承認四項企圖謀殺罪。案發時，被告忽然以水果刀襲擊四名正在晨運的受害人，刺中他們的頸、背、腹部、胸口及肩膀。被告其後再次進入香港時被捕。他承認為求被判死刑，便隨機挑選該四名受害人下手。精神科醫生認為被告患有強迫型人格障礙並以負面方法處理壓力。法庭裁定他對自身及社會均構成危險，判處監禁共 16 年。
- (3) 在香港特別行政區 訴 林少峯 [2022] HKCFI 1081 一案中，任職夜更的士司機的 54 歲被告企圖強姦當時 16 歲的女學生 X 女士。被告在法官及陪審團席前審訊後被裁定一項企圖強姦罪名成立。X 女士於某個星期五晚上在外與朋友喝酒，當時明顯已喝醉的她登上被告的的士。翌日早上，她醒來時發現自己身處酒店房間的床上，被告躺在她身旁，並以雙臂摟着她。X 女士驚呼並質問被告是誰，接着要求取回電話和手袋，隨即離開酒店和致電母親，並向警方報案。被告最終被捕，承認曾以陰莖磨擦 X 女士的私處，並指自己當時早洩，但堅稱 X 女士同意並主動與其性

pursuant to orders for retrial made by the appellate Courts.

Some significant cases heard in the CFI:

- (1) In *HKSAR v Chak Wing-sze* [2022] HKCFI 1123, the 17-year-old female defendant pleaded guilty to two counts of possession of arms and ammunition without a licence. The facts admitted by the defendant revealed that she was manipulated by her sex partner ("Stephen"), who was 10 years older than her, to keep two functional pistols and a large number of ammunition at her home and also hand over to another person a pistol and some ammunition. Before sentencing, she testified under an immunity from prosecution against Stephen and another defendant facing charges of conspiracy to murder and conspiracy to possess firearms and ammunition and the Court found her to be an honest witness. Following *HKSAR v Tsiang On-yan* [2019] 5 HKLRD 100 and *Z v HKSAR* (2007) 10 HKCFAR 183, the Court sentenced her to a term of six years & six months' imprisonment.
- (2) In *HKSAR v Liu Yueteng* [2022] HKCFI 2429, the defendant, a Mainland university student, pleaded guilty to four counts of attempted murder. The defendant suddenly attacked four victims who were doing morning exercise with a fruit knife, stabbing them at their neck, back, abdomen, chest, and shoulder. He was arrested when he subsequently entered Hong Kong again. He admitted targeting the four victims randomly as he wanted to be sentenced by way of death penalty. Psychiatrist found that the defendant had an obsessive compulsive personality difficulty with maladaptive stress-coping strategy. The Court found that he was both a danger to himself and to society and sentenced him to a total term of 16 years.
- (3) In *HKSAR v Lam Siu-fung Andy* [2022] HKCFI 1081, the defendant, a 54-year-old night-shift taxi driver, attempted to rape Ms X, then a 16-year-old school girl. He was convicted after trial before a judge and a jury on one count of attempted rape. Ms X, clearly drunk having spent a Friday evening out drinking with her friends, got into the defendant's taxi. She awoke the following morning to find herself in a bed at a hotel room with the defendant lying by her side with his arms around her. She screamed and asked the defendant who he was, then asked for her telephone and her bag. She left the hotel immediately and telephoned her mother. The matter was reported to the police. The defendant was eventually arrested and admitted that he had rubbed his penis against the private part of Ms X, he said he ejaculated prematurely but maintained that she had

交。正如裁決所示，陪審團顯然不接納他的解釋。法庭依據香港特別行政區訴蘇子揚 [2017] 4 HKLRD 219 一案，認為有必要對性侵犯醉酒女乘客的的士司機判處具阻嚇力的刑罰。此外，被告沒有使用避孕套，以及 X 女士遭受連串創傷性影響，亦是本案的加刑因素。法庭以五年作為量刑起點，並在考慮加刑因素後把刑期增加一年，再按減刑因素把刑期減少四個月，判處被告監禁五年零八個月。

區域法院：分科三 第 2A、2B 及 2C 組

該三個組別的檢控官就區域法院處理的刑事事宜提供法律指引。有關案件包括販毒、入屋犯法、搶劫、嚴重交通意外、與三合會有關的案件和性罪行，以及欺詐、串謀詐騙、詐騙和洗黑錢等商業罪行。2022 年，該三個組別的律師提供合共 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。此外，律師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、判刑和區域法院的保釋申請。

2022 年，在區域法院檢控的電話詐騙和洗黑錢案件數目以驚人速度增加。該等案件通常涉及易受傷害的受害人，以八、九十歲長者為主。罪犯設計使他們相信親屬正被羈留，需要付款才能獲釋，又或以為當局正在調查受害人資金的合法性，致使他們交出銀行帳戶的控制權。罪犯通常會在收到非法資金後，利用傀儡帳戶進一步清洗資金。此類案件的罪犯一般會被控串謀詐騙和洗黑錢罪，一經定罪，當局會根據《有組織及嚴重罪行條例》(第 455 章)的條文申請加刑。2022 年，律師就此類事項提供 150 項法律指引，並在區域法院提起 57 宗檢控。

區域法院審理的一些重要案件如下：

- (1) 在香港特別行政區訴楊競雄 [2022] HKDC 897 一案中，一名 14 歲女生獲招募加入

consented to sex and had initiated it. By the verdict, the jury had obviously rejected his account. Following *HKSAR v So Tsz-yeung* [2017] 4 HKLRD 219, the Court regarded that a deterrent sentence was warranted against taxi drivers who molest drunken female passengers. There were also aggravating features that he did not use a condom and Ms X was suffering from an array of traumatic impacts. The Court took five years as the starting point and enhanced it by one year given the aggravating features and reduced it by four months on account of the mitigating factors. The defendant was sentenced to a five years & eight months' imprisonment term.

District Court: Sections III(2)(A), (B) & (C)

Public Prosecutors in these three sections advise on criminal matters to be dealt with in the DC. The cases advised range from drug trafficking, burglary, robbery, serious traffic accidents, triad-related matters and sexual offences, to commercial crimes of fraud, conspiracy to defraud, deception and money laundering. In 2022, counsel of the three sections rendered a total of 1,233 pieces of advice, and 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. In addition, counsel prepared for and conducted trials, attended hearings for plea days, plea and sentence, and bail applications in the DC.

In 2022, the number of cases of telephone deception as well as money laundering prosecuted in the DC was increasing at a staggering rate. Such cases commonly involve deceiving a vulnerable victim, mainly elderly in their 80's and 90's, into believing that a relative is being detained and money is to be paid to effect the detainee's release or an authority is investigating the legitimacy of the victim's fund which causes the victim to surrender the control of the bank accounts. Usually the illicit funds are received and further laundered with the use of stooge accounts. Charges of conspiracy to defraud and money laundering were commonly laid in relation to such cases and upon conviction, applications would be made for enhanced sentencing under the provisions of the Organized and Serious Crimes Ordinance (Cap. 455). In 2022, counsel gave 150 advice on such matters and instituted 57 prosecutions at the DC.

Some significant cases heard in the DC:

- (1) *HKSAR v Yang King-hung* [2022] HKDC 897, a 14-year-old girl was recruited into the HKSAR Delegation Sports Team to represent Hong Kong in athletics competitions.

香港特別行政區體育代表隊，代表香港參加田徑賽事。被告是她的田徑教練，曾安排她參加本地及海外的比賽和訓練。被告曾四度猥褻侵犯該名女生，於訓練結束後，在酒店房間內藉詞為她按摩觸摸她的胸部並吻她。被告經審訊後被裁定四項猥褻侵犯罪名成立。主審法官認為被告濫用女生的信任，判處被告監禁兩年。

- (2) 在香港特別行政區 訴 蔡文邀 [2022] HKDC 868 一案中，被告及其妻子出席在西九龍法院大樓就其妻子被追討的民事債項進行的小額錢債審裁處聆訊。聆訊結束後，被告在法庭內與兩名屬於民事債項原告人的受害人發生衝突，並用菜刀襲擊受害人，導致他們的手臂嚴重受傷。被告認罪後，被裁定兩項有意圖而傷人罪罪名成立，判監兩年零六個月。
- (3) 在香港特別行政區 訴 麥福兆 (第一被告) 及另四人 (第二至第五被告) [2022] HKDC 254 一案中，一名 15 歲女童經網上社交媒體結識第五被告。她傳送裸體錄像給第五被告，其後與他性交。第五被告其後提議介紹客人給女童提供性服務，女童同意。第五被告為此在網上發布該名女童含有色情成分的照片和錄像片段招攬客人，

The defendant was the athletics coach of the girl who participated in competitions and training sessions organized by the defendant locally and overseas. On four different occasions, the girl was indecently assaulted by the defendant who touched her breasts under the guise of giving her massage and kissed the girl in hotel rooms after training. The defendant was convicted after trial of four charges of indecent assault. The trial judge was of the view that the defendant had abused the girl's trust and sentenced the defendant to a term of two years' imprisonment.

- (2) *HKSAR v Choi Man-ngo* [2022] HKDC 868, the defendant and his wife attended the Small Claims Tribunal in respect of a civil debt pursued against the defendant's wife. Once the hearing concluded at the West Kowloon Law Courts Building, the defendant confronted the two victims who were the plaintiffs of the civil debt in the court room. He attacked the victims with a chopper which resulted in serious injuries sustained by the victims on their arms. Upon the defendant's guilty pleas, he was convicted of two charges of wounding with intent and sentenced to a term of two years & six months' imprisonment.
- (3) *HKSAR v Mak Fook-siu (D1) & 4 others (D2-D5)* [2022] HKDC 254, a 15-year-old girl met D5 via an online social media. She sent nude videos to D5 and subsequently had sexual intercourse with him, who later offered to introduce clients to the girl for her provision of sex services, to which the girl agreed. D5 thus published the girl's photographs and video clips



再安排女童在不同場合與第一至第四被告性交。女童把從客人取得的金錢交由第五被告攤分。第五被告承認與年齡在 16 歲以下的女童非法性交、製作兒童色情物品以及依靠另一人賣淫的收入為生的罪名，被判監共兩年零六個月。第一至第四被告各被裁定與年齡在 16 歲以下的女童非法性交控罪成立。第三被告被判處 160 小時社會服務令，第一、第二及第四被告各被判監兩至三個月不等。

- (4) 在香港特別行政區 訴 陳展熙 [2022] HKDC 1401 一案中，任職健身教練的被告在健身中心內向一名年長的女會員訛稱，如她向他付一筆錢，她就可獲退回會費和課堂費用，並獲得一筆額外款項。被告又稱退款程序其中一環是該名女會員必需盡用名下信用卡的信用額進行簽賬。被告游說該名女會員購買多隻名貴腕錶並把腕錶交給他。最終該名女會員損失港幣 350 萬元。被告以同一手法騙取健身中心另一名女會員的現金和一隻名貴腕錶，價值逾港幣 50 萬元。被告認罪後被裁定兩項欺詐罪罪名成立，被判監共三年零四個月。

除上述職務外，該六個組別的檢控官也負責處理所有由區域法院和原訟法庭的檢控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 2022 年，由被定罪的被告提出的上訴申請有 257 宗，其中 131 宗被駁回，17 宗獲判得直，109 宗由被告放棄上訴。

此外，如被告在原訟法庭或區域法院獲裁定無罪，有關組別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。

律師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

containing pornographic materials online to tout clients and then arranged the girl to have sexual intercourse with D1 to D4 on different occasions. The girl passed the money that she had received from her clients to D5 who would share the money with her. Upon his own pleas, D5 was sentenced to a total term of two years & six months' imprisonment for the offences of unlawful sexual intercourse with a girl under the age of 16 years, making child pornography and living on earnings of prostitution of another. D1 to D4 were each convicted of a charge of unlawful sexual intercourse with a girl under the age of 16 years. A community service order for 160 hours was imposed on D3, while D1, D2 and D4 each received a sentence ranging from two to three months' imprisonment term.

- (4) *HKSAR v Chan Chin-hei* [2022] HKDC 1401, the defendant, who was a physical trainer, approached an elderly female member at a fitness centre and falsely represented that the female member could obtain a refund of her membership and lesson fees as well as an additional sum of money if she paid a sum to the defendant. The defendant further represented that the female member had to exhaust the credit limit of her credit cards as part of the refund procedure. The defendant persuaded the female member to buy luxury watches and passed those watches to the defendant. As a result, the female member suffered a loss of HK\$3.5 million. The defendant also tricked another female member of the fitness centre into parting with over HK\$0.5 million in the form of cash and a luxury watch in the same way. Upon conviction on his guilty pleas, the defendant was sentenced to a total term of three years & four months' imprisonment for two charges of fraud.

In addition to the duties mentioned above, Public Prosecutors in the six sections are also responsible for overseeing all appeal cases heard in the CA arising from prosecutions in the DC and the CFI (other than prosecutions for commercial crimes and public order offences which are handled by 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 2022, 257 appeal applications were brought by the convicted defendants, of which 131 were dismissed, 17 were allowed and 109 were abandoned.

Further, where a defendant has been acquitted in the CFI or the DC, consideration may 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 CA's opinion on the question which would

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，就原訟法庭或區域法院所判處的刑罰提出覆核申請。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有悖常理(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的裁決提出上訴。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，才會決定申請覆核刑罰。

2022年，律政司司長共提出13宗覆核刑罰申請，包括兩宗原訟法庭和九宗區域法院的案件，其中七宗已在年內由上訴法庭審理，全部獲判得直。

該等組別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。律師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。2022年，由被定罪的被告向終審法院提出的上訴許可申請有60宗，只有兩宗獲批上訴許可，另有兩宗獲終審法院判處得直。

以下是一些值得注意的案件：

- (1) 在香港特別行政區 訴 *Milne John* (2022) 25 HKCFAR 257 案中，控方就原審法官批准永久擱置原訟法庭審理一項販運危險藥物罪的裁決提出上訴，並獲終審法院判處得直。終審法院亦裁定，原審法官不接納被告流動電話內的WhatsApp訊息為呈堂證據的裁決有不妥之處，因其錯誤運用傳聞證據的原則，把證據的可接納性，與可給予該等證據的比重和可靠性混淆。儘管控方表明會提出上訴，原審法官仍批准被告保釋，被告其後離開本司法管轄區。終審法院亦在判決中闡明，如控方就法庭頒令擱置刑事法律程序的決定尋求上訴，法庭應如何正確處理保釋申請。
- (2) 由律政司司長轉交的法律問題 2021年第1至3號 (*Re Secretary for Justice's Reference (Nos 1-3/2021)*) [2022] 5 HKLRD 886 案關乎律政司司長在三宗案件的原審

provide future guidance on the lower Courts despite the fact that a reference under section 81D does not affect the defendant's acquittal in the case.

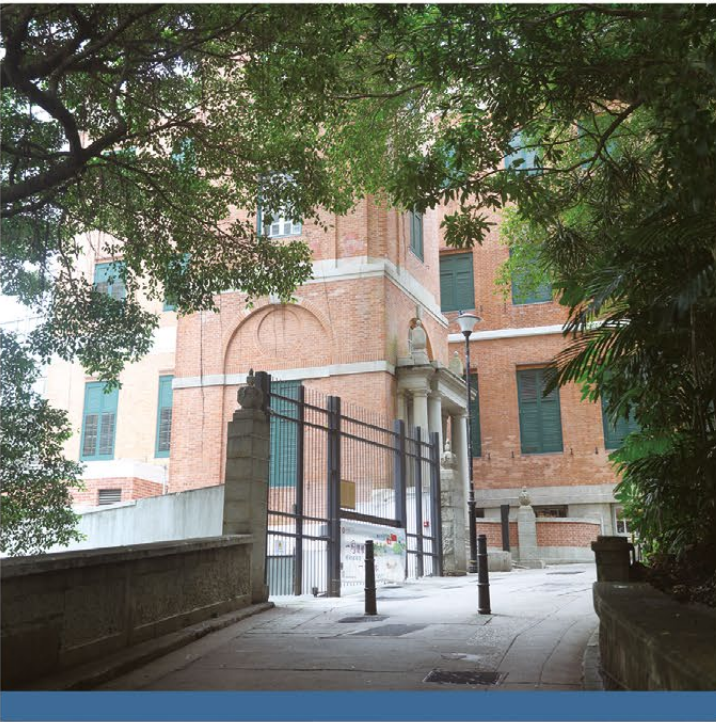
Counsel also advise on whether or not an appeal should be lodged by the Prosecution in a particular DC case by way of case stated under section 84 of the District Court Ordinance (Cap. 336) in respect of an acquittal by a District Judge, and whether or not an application for review should be made under section 81A of the Criminal Procedure Ordinance (Cap. 221) in respect of a sentence passed in the CFI or DC. 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. Likewise, decisions to lodge applications for review of sentence 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.

In 2022, a total of 13 applications for review of sentence were lodged by the Secretary for Justice, in which two were arising from the CFI, and nine from the DC. Seven of those applications had been heard by the CA within that year, and the review applications were all allowed.

At times, decisions have to be made on whether or not appeals to the CFA should be brought by the Prosecution in respect of decisions of the CFI or the CA. Counsel 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. In 2022, 60 applications for leave to appeal were brought by the convicted defendants to the CFA. Leave to appeal was granted only in two cases, and two cases were allowed by the CFA.

Below are some notable cases:

- (1) *HKSAR v Milne John* (2022) 25 HKCFAR 257, the CFA allowed the Prosecution's appeal against the decision of the trial judge to grant permanent stay in a CFI trial on a count of trafficking in a dangerous drug. The CFA also held that the decision relating to the admissibility of the WhatsApp messages in the defendant's mobile phone was flawed in that the trial judge had misapplied the hearsay rule and confused the issue of admissibility with weight and reliability. Notwithstanding the Prosecution's indication of appeal, the trial judge granted bail to the defendant who then left



法官指示陪審團宣告被告無罪後根據《刑事訴訟程序條例》(第 221 章)第 81D 條轉交的三个法律問題。該三宗案件均涉及跨境販運活動，所有被告在法官指示下獲裁定無罪後已立即離港。該等案件的主要爭議點是被告是否知道危險藥物的存在。律政司司長提請上訴法庭考慮，如控方僅依賴環境證據確立罪行的關鍵元素，應如何正確地 (a) 處理無須答辯陳詞或決定是否撤回案件而不讓陪審團考慮並指示裁定無罪判決；以及 (b) 基於辯方證據或被告在庭外的陳述或指稱處理互相對立的無罪推論。上訴法庭裁定，上述三宗案件的原審法官均“不當地取代陪審團的職能”，“在有關法庭錯誤地指示裁定無罪”，因此推翻他們的判決。上訴法庭在廣泛審閱相關案例後，再次肯定 *R v Galbraith* [1981] 1 WLR 1039 及 *Attorney General v Li Fook-shiu Ronald* [1990] 1 HKC 1 案採用的典型做法。上訴法庭認為有迫切需要改革香港現行的法定程序，供控方就高等法院法官的無須答辯判定及 / 或指示作出的無罪判決提出上訴。

如上文所述，分科三經驗豐富的律師負責高度敏感案件的檢控工作，舉例如下：

the jurisdiction. The judgment also addresses the correct approach that should be taken in relation to the grant of bail when a stay of criminal proceedings has been ordered but the prosecutor seeks to appeal against that stay decision.

- (2) *Re Secretary for Justice's Reference (Nos 1–3/2021)* [2022] 5 HKLRD 886 involved three references brought by the Secretary for Justice under section 81D of the Criminal Procedure Ordinance (Cap. 221), following the trial judge's direction to the jury to acquit in each case. All three cases involved cross-border trafficking activities. All the defendants had left Hong Kong immediately following their directed acquittals. The central issue in each case was the defendant's knowledge of dangerous drugs. The CA was invited to consider, where the Prosecution rely only on circumstantial evidence in establishing a key element of an offence, the correct approach in (a) dealing with a submission of no case to answer or in deciding whether to withdraw the case from the jury with a direction to acquit; and (b) dealing with competing inferences consistent with innocence which are premised on the defence evidence or the out-of-court statements or assertions of a defendant. The CA held that the judges in all three cases had “impermissibly usurped the function of each jury” with the “acquittals being wrongly entered at the direction of the court concerned”, and overruled their rulings. The CA, upon extensively reviewing the relevant authorities, reaffirmed the classic approach in *R v Galbraith* [1981] 1 WLR 1039 and *Attorney General v Li Fook-*

在香港特別行政區 訴 *C.H.P.* (第一上訴人)、*W.H.T.* (第二上訴人) 及 *G.M.* (第三上訴人) [2023] HKCA 216 一案中，上訴法庭指本案是一宗慘劇，案中第一上訴人、第二上訴人和第三上訴人以“極其冷血無情的手段殘酷對待和疏忽照顧”當時七 / 八歲的男童“X”和五歲的女童“Z”，最終導致 Z 死亡。第一上訴人是 X 和 Z 的生父；第二上訴人是他們的繼母；第三上訴人是第二上訴人的母親。案發時，他們與 X、Z 以及第二上訴人在上一段婚姻所生的子女 Y 同住。控方針對第一上訴人、第二上訴人和第三上訴人的指控如下：(i) 第一上訴人和第二上訴人長期對 Z 和 X 施虐，包括嚴重虐待、令其捱餓以及得不到適當的醫療護理，整整歷時五個月。這些虐待行為嚴重削弱 Z 的免疫系統，導致她受到致命細菌感染 (亦即敗血病) 死亡；以及 (ii) 第三上訴人故意忽略 Z 和 X，沒有阻止第一上訴人和第二上訴人對 Z 和 X 施虐，也沒有給 Z 和 X 提供生活所需。第一上訴人和第二上訴人承認兩項殘酷對待兒童罪，但不承認一項謀殺罪 (針對第一上訴人和第二上訴人的控罪)；第三上訴人不承認四項殘酷對待兒童罪 (只針對第三上訴人的控罪)。陪審團在審訊後裁定第一上訴人和第二上訴人謀殺罪成；另裁定第三上訴人僅兩項疏忽照顧致殘酷對待兒童罪成，另外兩項虐待致殘酷對待兒童罪罪名不成立。第一上訴人和第二上訴人被判處終身監禁，第三上訴人被判處監禁五年。第一上訴人和第二上訴人另承認兩項殘酷對待兒童罪，各被判監合共九年零六個月，與終身監禁同時執行。第一至第三上訴人被定罪和判刑後，向上訴法庭提出上訴。上訴法庭駁回 (i) 第一上訴人和第二上訴人就謀殺定罪提出的上訴許可申請，以及 (ii) 第三上訴人就兩項殘酷對待兒童罪判刑提出的上訴許可申請。上訴法庭指出，本案是一宗“狠毒和令人不安的案件，震驚社會大眾”，第一上訴人、第二上訴人和第三上訴人的刑期“一天都沒有多判”。

shiu Ronald [1990] 1 HKC 1. The CA observed that there is a need for urgent reform of the existing statutory procedure in Hong Kong for the Prosecution to appeal against a High Court judge's ruling of no case to answer and/or direction to acquit.

As stated above, experienced counsel in Sub-division III are responsible for prosecuting highly sensitive cases. An example is as follows:-

In *HKSAR v C.H.P. (A1), W.H.T. (A2) & G.M.(A3)* [2023] HKCA 216, the CA stated that this was a tragic case in which A1, A2 and A3 had subjected a boy “X” aged seven/eight years, and a girl “Z” aged five years to “extreme and callous cruelty and neglect”, which ultimately resulted in Z's death. A1 was the natural father of X and Z, while A2 was their step-mother, and A3 was A2's mother. At the time of the offences, they were living together with X and Z, and also with Y, who was a child of A2's previous marriage. The prosecution case against A1, A2 and A3 was as follows: (i) A1 and A2 throughout a period of five months subjected Z and X to prolonged course of ill-treatment, including severe beatings, hunger and not being given proper medical care, and the ill-treatment caused significant deficiency in Z's immune system which had predisposed Z to fatal bacterial infection i.e. septicemia, which caused her death; and (ii) A3 wilfully neglected Z and X by failing to discontinue the ill-treatment on Z and X by A1 and A2, and failing to provide life necessities to Z and X. While A1 and A2 pleaded guilty to two counts of cruelty to child, they pleaded not guilty to one count of murder (against A1 and A2) and four counts of cruelty to child (against A3 only). After trial, the jury convicted A1 and A2 of murder, and A3 of only two counts of cruelty to child by neglect, and acquitted A3 of another two counts of cruelty to child by ill-treatment. A1 and A2 were sentenced to life imprisonment and A3 to a total term of five years' imprisonment. Regarding the other two counts of cruelty to child to which A1 and A2 had pleaded guilty, they were each sentenced to a total of nine years & six months' imprisonment, running concurrently with their life sentence. Following their conviction and sentence, A1 to A3 appealed to the CA which dismissed (i) A1's and A2's application for leave to appeal against their conviction of murder; and (ii) A3's application for leave to appeal against her sentence on two counts of cruelty to child. The CA observed that this “was a wicked and disturbing case, which will have shocked everyone in the community” and the sentences of A1, A2 and A3 were “not a day too long”.

分科四 (商業罪案)

Sub-division IV (Commercial Crime)

本分科專門負責就白領罪行提供法律指引，以及作出檢控和上訴。白領罪行的例子有商業詐騙、網上欺詐、洗黑錢、貪污行賄及稅務詐騙等。

本分科也專責處理涉及《保險業條例》(第 41 章)、《稅務條例》(第 112 章)、《防止賄賂條例》(第 201 章)、《選舉 (舞弊及非法行為) 條例》(第 554 章)、《證券及期貨條例》(第 571 章)及《一手住宅物業銷售條例》(第 621 章)的刑事違規案件。

This Sub-division specializes in advising on and prosecuting the trials and appeals of white-collar crimes such as commercial fraud, online fraud, money laundering, corruption and bribery, and revenue fraud.

It also specializes in dealing with cases arising from breaches of a criminal nature of the Insurance Ordinance (Cap. 41), the Inland Revenue Ordinance (Cap. 112), the Prevention of Bribery Ordinance (Cap. 201), the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Securities and Futures Ordinance (Cap. 571), and the Residential Properties (First-hand Sales) Ordinance (Cap. 621).



此等罪案由執法機關負責調查，當中包括香港警務處（通常為商業罪案調查科或財富情報及調查科）、保險業監管局（保監局）、廉政公署、稅務局、證券及期貨事務監察委員會（證監會）及一手住宅物業銷售監管局（銷售監管局）。

此外，廉政公署所調查普通法中的公職人員行為失當罪也屬本分科的職責範疇。

分科律師會就證據是否充分向執法機關提供法律指引。如證據足以確使有合理機會達致定罪，分科律師也會考慮提出檢控是否符合公眾利益；如是，則適當的控罪及審訊法院的級別為何。分科律師在審訊後會仔細審視結果，並決定應否提出上訴或覆核。律師也會盡量出庭進行檢控，並處理上訴和覆核案件。

本分科在 2022 年有一些轉變，但職責範疇大致依舊。前分科四（訟辯）一訟辯組因重行調配人手而解散，其訟辯職務由其餘四組承擔。此外，該四組分別改稱分科第四 1A 組、第 1B 組、第 2A 組及第 2B 組。首兩組就警方（主要為商業罪案調查科和財富情報及調查科，但也有警方其他單位）調查的案件提供法律指引，而第 1B 組同時就保監局、稅務局、證監會及銷售監管局調查的案件提供法律指引。第 2A 組及第 2B 組就廉政公署調查的案件提供法律指引，一般分別負責處理涉及公營機構貪污和選舉罪行的案件，以及私營機構貪污案件。隨着《選舉（舞弊及非法行為）條例》（第 554 章）第 27A 條在 2021 年 5 月 31 日實施，把在選舉期間內藉公開活動煽惑另一人不投票或投白票或無效票的行為訂為刑事罪行，第 2A 組在 2022 年給予法律指引，對干犯此新訂罪行的合共九人提出檢控。

在 2022 年，分科四由副刑事檢控專員林穎茜資深大律師掌管，共有 30 名律師。分科下四個組別分別由高級助理刑事檢控專員黃堅邦先生、陳鳳珊女士、陳淑文女士和何偉萬女士率領。本分科的律師在 2022 年曾提供 1,715 項書面及口頭法律指引，出庭日數共 782.5 日。下文載述各組別在年內處理的一些案件。

These crimes are investigated by law enforcement agencies. They include the Hong Kong Police (usually by their Commercial Crime Bureau (“CCB”) or Financial Intelligence and Investigation Bureau (“FIIB”)), Insurance Authority (“IA”), Independent Commission Against Corruption (“ICAC”), Inland Revenue Department (“IRD”), Securities and Futures Commission (“SFC”) and Sales of First-hand Residential Properties Authority (“SRPA”).

In addition, the common law offence of misconduct in public office investigated by the ICAC is also within the Sub-division’s specialty.

Counsel advise these law enforcement agencies on the sufficiency of evidence. Where there is sufficient evidence to secure a reasonable prospect of conviction, counsel also consider whether it is in the public interest to institute a prosecution, and if so, what the appropriate charges are and which level of court at which the trial should take place. After trial, counsel carefully scrutinise the outcome and decide whether any appeal or review should be initiated. Whenever possible, counsel will prosecute the trials and argue the appeals and reviews.

2022 saw a few changes to the Sub-division. Whereas its portfolio remained roughly the same, the previous Section IV (Adv) – Advocacy Section was disbanded as a result of re-deployment of manpower and its advocacy portfolio was absorbed by the remaining four sections. Further, those four sections were renamed into Sections IV(1)(A), IV(1)(B), IV(2)(A) and IV(2)(B). The former two sections advise on cases investigated by the Police, mainly the CCB and FIIB but also other formations of the Police. Section IV(1)(B), in addition, advises the IA, IRD, SFC and SRPA on cases investigated by them. Sections IV(2)(A) and IV(2)(B) advise the ICAC on their cases and in general they handle, respectively, public sector corruption and electoral crimes, and private sector corruption. With the implementation of section 27A of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) on 31 May 2021, which criminalizes the conduct of inciting another not to vote or to cast a blank or invalid vote by way of public activity during an election period, Section IV(2)(A) advised to prosecute a total of 9 persons for having committed this new offence in 2022.

In 2022, Sub-division IV comprised 30 counsel and was headed by Ms Vinci Lam, SC, Deputy Director of Public Prosecutions. The four sections were led by Senior Assistant Directors of Public Prosecutions Mr Michael Wong, Ms Denise Chan, Ms Alice Chan and Ms Winnie Ho respectively. Counsel of the Sub-division gave 1,715 pieces of advice, written and oral, and attended court for a total of 782.5 court days in 2022. Below are some of the cases handled by each section in the year.

分科四第 1A 組

在香港特別行政區訴 *Chang Yau-hung, Alexander* (高院刑事案件 2020 年第 350 號) 一案中，被告是一名前執業律師，擔任中區少年警訊永遠名譽會長。他被控“盜竊”罪，以及“處理已知道或相信為代表從可公訴罪行的得益的財產”(一般稱為“洗黑錢”)的交替控罪。控方案情指受害人被誘使投資一項欺詐投資計劃。受害人被告知被告會以在法律事務有往來者的身分收取並代其持有資金，以及受害人其後不論任何原因決定停止交易，又或交易一經終止，均會獲發還資金。受害人於是把 1,000 萬美元轉入被告的個人帳戶。被告之後與受害人見面，向受害人確認他負責以信託方式代受害人持有投資本金，保證不會盜用/轉移投資本金，並會在投資計劃完成後向受害人交還全數本金。然而，被告其實在受害人不知情和未經其許可下從其個人帳戶轉出該筆資金。受害人其後得知被告被指參與另一宗刑事案件，因而擔心其投資本金不保，於是聯絡被告，要求發還投資本金，但被告不斷以諸多藉口逃避向受害人還款，受害人遂向警方報案。

被告承認盜竊控罪。法庭將量刑起點定為監禁 10 年，考慮到被告遲至交付審判程序後才認罪，遂把刑期扣減 25%。鑑於被告從受害人收取 1,000 萬美元前便已向全球多個執法機關舉報，有效制止了其他罪犯進一步犯案，法庭因此再扣減刑期三個月，最終刑期為七年零三個月。

香港特別行政區訴 *Or Chi-ming* (東區裁判法院刑事案件 2022 年第 380 號) 是一宗詐騙案。此詐騙案的被告循“防疫抗疫基金”下的“零售業資助計劃”(計劃)提交六份有欺詐內容的申請，其中兩份成功獲批合共港幣 16 萬元資助，餘下四份則被拒絕。他被控兩項“欺詐”罪及四項“企圖欺詐”罪。

申請商戶須在香港擁有固定地址及獨立營運的實體商店，並以零售為主要及實質業務，以及在 2020 年 1 月 1 日前已經開業，才符合資格循計劃申請資助。每家合資格零售店可獲一次過港幣 80,000 元的資助。

Section IV(1)(A)

In *HKSAR v Chang Yau-hung, Alexander* HCCC 350/2020, the defendant is a former practising solicitor and Permanent Honorary President of the Junior Police Call Central District. He was charged with the offence of “theft” and with “dealing with property known or believed to represent proceeds of an indictable offence” (or “money laundering” in common parlance) which was laid as an alternative charge. The prosecution case was that the victim was induced into investing in a fraudulent investment scheme. He was told that the defendant would act as the legal affiliate to receive and hold the fund for him. He was further told that the fund would be returned to him if he subsequently decided to stop the trading for any reason or the trading ended. The victim therefore transferred US\$10 million to the personal account of the defendant. Afterwards, the defendant met up with the victim and confirmed with the victim that he was responsible for holding the investment capital on trust for the victim. The defendant assured that he would not embezzle/transfer the investment capital and would, upon conclusion of the investment program, return the whole sum of capital to the victim. However, the defendant had in fact, without the knowledge and approval of the victim, transferred the sum out of his personal account. The victim subsequently learnt of the defendant’s alleged involvement in another criminal case and was thus concerned about his investment capital. He contacted the defendant for the return of his investment capital but the defendant had kept using various excuses to avoid repaying the victim. The victim then made a report to the police.

The defendant pleaded guilty to the charge of theft. The court adopted a starting point of sentence of 10 years’ imprisonment and gave the defendant a 25% discount in view of his late guilty plea which was only entered after committal proceedings. The court gave a further discount of 3 months for the defendant’s reports, made before receipt of the US\$10 million from the victim, to various law enforcement agencies over the world which had in effect stopped the other culprits from further offending. The ultimate sentence passed was 7 years and 3 months’ imprisonment.

HKSAR v Or Chi-ming ESCC 380/2022 is a case of fraud where the defendant made 6 fraudulent applications to the Retail Sector Subsidy Scheme (“RSSS”) under the Anti-epidemic Fund. He successfully obtained HK\$160,000 of subsidy in 2 of his applications while the other 4 applications were rejected. He was charged with 2 counts of “fraud” and 4 counts of “attempted fraud”.



2020年4月至5月間，被告向政府提交六份申請，訛稱其公司在不同地址設有六家零售店，當中首兩份獲得批准。之後，被告被發現就其後的申請填報其他申請商戶使用過的地址，觸發當局對其全部申請進行覆檢。實地視察發現，被告在關鍵時間沒有在填報的地址開設任何業務。他為獲得資助而向計劃提交的所有照片均在不明地點或位於同一大廈內，鋪面固設了臨時紙板的店鋪拍攝。因應上述調查結果，被告所提交的餘下四份申請均遭拒絕。

被告承認一項“欺詐”罪及三項“企圖欺詐”罪。考慮到被告及時認罪、沒有刑事紀錄，以及已向政府悉數清還款項，法庭判處他履行200小時社會服務令。

分科四第 1B 組

律政司司長 訴 江智喬 (答辯人) [2023] 1 HKLRD 72 一案是由律政司司長申請覆核答辯人被判處的刑罰。答辯人承認 13 項詐騙和兩項洗黑錢罪。案情指答辯人開設一間假公司，通過社交媒體和聘請代理人推廣高回報投資。她收取了回應者的資金，但從沒替他們投資。12 名已知受害人向答辯人存入款項合共

To be eligible for the subsidy under RSSS, an applicant must be conducting a substantial and substantive retail business at a fixed physical and individually operated store in Hong Kong which had commenced business before 1 January 2020. Each eligible retail store would receive a one-off subsidy of HK\$80,000.

Between April and May 2020, the defendant made 6 applications to the Government, falsely claiming that his company had six retail stores in different addresses. His first 2 applications were approved. It was later revealed that the addresses he used for his subsequent applications had already been used by other applicants which triggered a review of all the defendant's applications. Site visits were conducted and it was found that the defendant did not establish any business at the addresses provided at the material time. All the photos submitted to RSSS for approval of the subsidy were either taken at unknown locations or at shops in the same building with temporary cardboards fixed at the shop front. As a result of the aforesaid investigation, the remaining 4 applications made by the defendant were rejected.

The defendant pleaded guilty to 1 count of “fraud” and 3 counts of “attempted fraud”. Considering his timely guilty pleas, that he had no previous criminal record and that he had made full restitution to the Government, the Court sentenced the defendant to 200 hours of community service.

Section IV(1)(B)

Secretary for Justice v Kong Chi-kiu (“Respondent”) [2023] 1 HKLRD 72 concerns an application by the Secretary for Justice (“SJ”) to review the sentence imposed on the Respondent, who had pleaded guilty to 13 counts of fraud and two counts of money laundering. The facts were that the Respondent set up a sham company to promote high-yield investments via social media and agents employed by her. Despite receiving funds from those who responded, she never made any investment for them. 12 identified victims deposited a total sum of \$1,798,638 with the Respondent for investment and suffered a total loss of \$1,666,675. The two charges of money laundering involved sums of \$2.4 million and \$1.16 million in the Respondent's two bank accounts respectively, including funds from the identified victims and other unidentified victims. The judge in the District Court sentenced the Respondent to concurrent sentences of 2 years and 3 months' imprisonment for all charges.

On the SJ's application, the Court of Appeal identified the aggravating features of online fraud and made a clear ruling that for investment fraud, whether a defendant has any professional qualification or he only held out to be so, such is regarded as

1,798,638 元用作投資，淨虧損合共 1,666,675 元。兩項洗黑錢控罪涉及分別存放於答辯人兩個銀行帳戶內的 240 萬元及 116 萬元款項，包括來自己知受害人和其他尚未確定身分的受害人的資金。區域法院法官判處答辯人所有控罪的刑期同期執行，監禁兩年零三個月。

就律政司司長的申請，上訴法庭指出網上詐騙的加刑因素，並明確裁定就投資騙案而言，不論被告確實具備或僅顯示其具備專業資格，均視為構成“違反誠信”，屬加刑因素。上訴法庭就網上詐騙控罪以四年監禁為量刑起點，並重新判處答辯人洗黑錢控罪的刑罰。考慮到整體量刑原則，法庭下令部分刑期分期執行。答辯人因在覆核刑期期間所受的困苦而獲得減刑。覆核後最終改判的刑期為三年零九個月。

香港特別行政區 訴 鍾沛傑 (覆核申請 2022 年第 9 號) 是一宗特殊的網上詐騙案。被告留意到信用卡的卡號有固定排序，並偶然發現某類信用卡的相應保安碼。他遂利用一些網上應用程式計算出信用卡號碼、檢查數位、到期日和保安碼的可能組合。經過多次反覆試驗，他成功利用 44 張他人持有的信用卡資料，向不同的網店提交 53 張網購訂單，已派遞給他的貨品總值超過港幣 95 萬元。他在收取其餘所購貨品的派遞時當場被捕。他被控一項“盜竊”和一項“企圖盜竊”罪。被告認罪後被判處監禁合共兩年。考慮到刑罰屬明顯不足及 / 或原則上錯誤，分科四第 1B 組律師代表律政司司長申請覆核刑罰。上訴法庭在 2023 年 3 月 23 日就有關申請進行聆訊。法庭裁定律政司司長的申請得直，就兩項控罪分別採納六年和兩年零六個月的監禁為量刑起點。由於被告認罪，被捕後表現合作，確認詐騙計劃及交易，而 he 已服畢原有刑期，以及由於這是對刑罰的覆核，因此法庭改判刑罰為三年監禁。

在東區裁判法院刑事案件 2022 年第 1927 號中，證監會與警方對一個有組織的“唱高散貨”集團採取聯合行動，落案檢控 14 名被告，其中六人被控干犯普通法、《證券及期貨條例》第 300 條及《刑事罪行條例》第 159A 及 159C 條所訂明的串謀欺詐罪，以及串謀在涉及證券的交易中意圖欺詐或欺騙而使用計劃罪的交替控罪。該六名被告被指與多名人士串謀

constituting “breach of trust” which is an aggravating factor in sentencing. The Court of Appeal adopted a starting point of 4 years of imprisonment for the online fraud charges. It also sentenced the Respondent for the money laundering charges afresh. Having considered the principle of totality, a partly consecutive sentence was imposed. In view of the hardship faced by the Respondent during the review of sentence, a discount was given and the final sentence substituted on review was 3 years and 9 months’ imprisonment.

Secretary for Justice v Chung Pui-kit Billy CAAR 9/2022 is an online fraud case with a special feature. The defendant noticed that there was a sequence in the credit card numbers and he accidentally found the corresponding security code of a particular type of credit card. He then used some online programmes to calculate the possible combination of credit card numbers, check digits, expiry dates and security codes. After many times of trial and error, he successfully used the information of 44 credit cards of other persons to place 53 online purchase orders at different online shops. The total value of the goods delivered to the defendant was more than HK\$950,000. He was caught red-handed when he was receiving the delivery of the outstanding purchased items. He was charged with one count of “Theft” and one count of “Attempted Theft”. Upon his own guilty pleas, the defendant was sentenced to 2 years’ imprisonment in total. Considering the sentence manifestly inadequate and/or wrong in principle, counsel of Section IV(1)(B) made an application on behalf of the SJ to review the sentence. The application was heard on 23 March 2023 before the Court of Appeal. The Court allowed the SJ’s application and adopted a starting point for sentence of 6 years and 2 years 6 months of imprisonment for the two charges respectively. Since the defendant had pleaded guilty, cooperated by identifying the fraudulent scheme and transactions after being arrested and completed his original sentence, and because this was a review of sentence, the Court substituted a sentence of 3 years’ imprisonment.

In ESCC 1927/2022, fourteen defendants were charged following a joint operation of the SFC and the Police against a sophisticated ramp-and-dump syndicate. Six of the defendants were charged with the offences of Conspiracy to defraud with an alternative charge of Conspiracy to employ a scheme with intent to defraud or deceive in transactions involving securities under common law, section 300 of the Securities and Futures Ordinance (SFO) and sections 159A and 159C of the Crimes Ordinance. The six defendants were alleged to have conspired with a number of individuals between October 2018 and May 2019 to use multiple nominee accounts to corner the shares of the target stocks and drive up the price of those shares. At a later stage, the syndicate

在 2018 年 10 月至 2019 年 5 月期間，使用多個代名人帳戶對目標股份進行挾倉，推高股價。據稱，該集團後來通過不同社交媒體平台誘使投資者買入該等股份，其後積極拋售股份獲利，而當市場對該等股份再沒有需求時，股價便隨之大跌。14 名被告中，有三人被加控聯同另外八名被告干犯洗黑錢罪。各被告無須答辯，案件押後至 2023 年 10 月 4 日提堂。

在香港特別行政區 訴 *Li Shuangkai* 及另兩人（區院刑事案件 2022 年第 68 號）一案中，三名被告被控合共四項洗黑錢罪。案中涉及一連串典型電話騙案，身分不明的騙徒向四名受害長者訛稱是其“兒子”。受害人信以為真，準備現金營救騙徒聲稱遭遇不同危急狀況的“兒子”，而親自與受害人交收現金的正是本案各被告。四宗騙案均在同一個月內發生，涉及的犯罪得益介乎港幣 6 萬元至港幣 10 萬元。各被告認罪，獲扣減刑期，區域法院分別判處第一被告、第二被告及第三被告監禁 18 個月、24 個月及 25 個月。

在香港特別行政區 訴 高譽投資有限公司（九龍城裁判法院傳票案件 2022 年第 16225 至 16235 號）一案中，高譽投資有限公司（高譽）是九龍美善同道 80 號發展項目“翰畋”的賣方，須遵守《一手住宅物業銷售條例》（第 621 章）各項有關銷售安排及銷售文件的規定。銷售監管局經審查後，發現高譽在 2020 年 8 月 27 日至 2022 年 4 月 21 日期間不時違反各項規定，包括未能 (i) 在售樓處和賣方的互聯網網站提供最新的售樓說明書以供閱覽；(ii) 在賣方的互聯網網站提供有關銷售安排的資料以供閱覽；以及 (iii) 在售樓處提供有關發展項目的鳥瞰照片和分區計劃大綱圖以供閱覽。當局向高譽發出共 11 張傳票。高譽承認八張傳票的控罪，最終被裁定罪名成立，罰款合共港幣 74,000 元。這宗案件是銷售監管局自《一手住宅物業銷售條例》在 2013 年 4 月生效後採取的第 13 次檢控行動。

was alleged to induce investors to purchase those shares through different social media platforms. The syndicate then disposed of their shares aggressively at a profit and the price of the target stocks collapsed once the demand was exhausted. Among the fourteen defendants, three faced additional charges of money laundering together with eight other defendants. No plea was taken and the case was adjourned to 4 October 2023 for mention.

In *HKSAR v Li Shuangkai and Two Others* DCCC 68/2022, three defendants were charged with a total of four counts of money laundering. The facts showed a series of typical telephone deceptions. Four senior citizens were victimized by unidentified scammer(s) who falsely represented themselves to be their respective “son”. Believing the false representations, the victims prepared cash to bail their “son” out of different dire circumstances presented by the scammer(s). The defendants in the present case were persons who collected the cash from the victims in person. All four incidents took place within one month. The “tainted” proceeds involved ranged between HK\$60,000 and HK\$100,000. The defendants pleaded guilty to their respective charges. After affording the usual guilty plea discount, the District Court sentenced the three defendants to prison for 18 months (for D1), 24 months (for D2), and 25 months (for D3).

In *HKSAR v Fame Top Investment Limited* KCS 16225-16235/2022, Fame Top Investment Limited (“Fame Top”) was the vendor of a development “80 Maidstone Road” at No.80 Maidstone Road, Kowloon. As the vendor, Fame Top was required to comply with various requirements on sales arrangement and sales documents imposed by the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“RPFSSO”). Upon inspection by the SRPA, Fame Top was found in breach of various requirements from time to time which covered the period from 27 August 2020 to 21 April 2022, including failing to provide, *inter alia*, (i) an updated sales brochure available for inspection at the sales place and on the vendor’s website; (ii) information about the sales arrangement available for inspection on the vendor’s website; and (iii) aerial photograph and outline zoning plan related to the development available for inspection at the sales place. A total of 11 summonses were taken out against Fame Top. It was ultimately convicted, upon its guilty pleas, of 8 summonses and was fined to a total of HKD74,000. This case was the SRPA’s 13th prosecution action since the commencement of the RPFSSO in April 2013.

分科四第 2A 組

在香港特別行政區 訴 何嘉雯及另六人 (觀塘裁判法院刑事案件 2022 年第 429 號) 一案中，負責在社區疫苗接種中心為市民接種新冠疫苗的一名護士 (第一被告) 與另六人 (第二至第七被告) 串謀，向他們發出紙本疫苗接種紀錄，但實際上並無為他們任何一人接種疫苗。第一被告承認兩項串謀詐騙罪，被裁定罪名成立，判處監禁合共六個月。第二至第七被告各被控一項串謀詐騙罪，第二被告承認控罪，判處監禁兩個月，第六及第七被告經審訊後被裁定罪名成立，各判處監禁三個月。第三至第五被告在案中的角色被動，被法院頒令簽保守行為 12 個月。

在香港特別行政區 訴 戴耀廷及另二人 (區院刑事案件 2021 年第 683 號)，第一被告涉嫌在 2016 年立法會換屆選舉招致未經授權的選舉開支，即在兩份本地中文報章上三度刊登廣告，藉以宣傳一個策略性投票計劃，最終目標是在上述選舉的最後一刻作出投選候選人的建議。第一被告是推展該計劃的關鍵人物。招致的廣告開支總額為 253,540 元。所有被告被控四項在選舉中作出招致選舉開支的非法行為，違反《選舉 (舞弊及非法行為) 條例》(第 554 章) 第 23(1) 條。第一被告承認全部控罪，被裁定罪名成立，判處監禁合共十個月。第二及第三被告在案中的角色較被動，被法院頒令簽保守行為 12 個月。

在香港特別行政區 訴 甘啟文 (區院刑事案件 2021 年第 353 號) 一案中，被告為衛生署醫務微生物學顧問醫生，承認四項普通法中的公職人員行為失當罪及兩項欺詐罪，違反《盜竊罪條例》(第 210 章) 第 16A 條，被裁定罪名成立。被告涉嫌向三個國際衛生組織訛稱他獲衛生署授權與其簽訂協議，並就協議收取服務費，而事實上衛生署對這些協議並不知情，他被判處監禁合共 31 個月。

在香港特別行政區 訴 歐頌賢 (東區裁判法院刑事案件 2021 年第 1494 號) 一案中，被告被控在選舉中作出向他人提供娛樂和賄賂選民的舞弊行為罪，分別違反《選舉 (舞弊及非法

Section IV(2)(A)

In *HKSAR v Ho Ka-man Carmen and 6 others* KTCC 429/2022, a nurse (D1), who was responsible for inoculating citizens with COVID-19 vaccine at a Community Vaccination Centre, had conspired with 6 other persons (D2 to D7) to issue paper vaccination records to them without actually inoculating any of them with the vaccine. D1 was convicted of 2 counts of conspiracy to defraud on her own plea and sentenced to a total of 6 months' imprisonment. Each of D2 to D7 was charged with 1 count of conspiracy to defraud. D2 pleaded guilty to the charge and was sentenced to 2 months' imprisonment, while D6 and D7 were convicted of the charge after trial and each of them was sentenced to 3 months' imprisonment. D3 to D5, who took a passive role in the case, were ordered to be bound-over for 12 months.

In *HKSAR v Tai Yiu-ting and 2 others* DCCC 683/2021, D1 was alleged to have incurred unauthorized election expenses in the 2016 Legislative Council General Election by placing advertisements in 2 local Chinese newspaper on 3 occasions for the purpose of promoting a strategic voting scheme with the ultimate aim of providing last minute recommendations of candidates in the said election. D1 was the key person involved in introducing and promoting the scheme. The total advertising expenses incurred were \$253,540. All defendants were charged with 4 counts of engaging in illegal conduct at an election, contrary to section 23 (1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). D1 was convicted of all counts on his own plea and was sentenced to a total term of 10 months' imprisonment. D2 and D3, who played a more passive role, were ordered to be bound over for 12 months.

In *HKSAR v Kam Kai-man Joseph* DCCC 353/2021, the defendant, a Consultant Medical Microbiologist of the Department of Health, was convicted on his own pleas of 4 counts of the common law offence of misconduct in public office and 2 counts of fraud, contrary to section 16A of the Theft Ordinance (Cap. 210). It was alleged that the defendant made false representations to 3 international health organizations that he had the authority of the Department of Health to enter into agreements with these organizations and to receive service fees from them, when in fact the Department of Health had no knowledge of these arrangements. He was sentenced to a total imprisonment term of 31 months.

In *HKSAR v Au Chung-yin* ESCC 1494/2021, the defendant was convicted after trial of the offences of engaging in corrupt conduct to provide entertainment to others and to bribe electors in an election, contrary to section 12(1)(a) and section 11(1)(a) of

行為)條例》(第554章)第12(1)(a)和第11(1)(a)條，經審訊後被裁定罪名成立。控方案情指，被告在參選2019年區議會選舉期間曾安排兩名歌手向他人提供歌唱娛樂。她也向他人提供免費書法班，意圖誘使他人該選舉中投票給她。她被判處監禁共四個月零兩星期，並已就定罪及刑罰提出上訴。

在香港特別行政區 訴 黃瑪莉 (高院刑事案件2020年第98號)一案中，被告承認七項欺詐罪，違反《盜竊罪條例》(第210章)第16A條，被裁定罪名成立。被告使用虛假授權書，宣稱涉案物業的業主任任她為該等物業的合法受權人，藉以向不同財務機構及一名人士申請和取得貸款。受害的業主是被告的親戚(包括其家姑、大伯及大伯母)和前保險客戶。該等欺詐罪共涉及超過港幣3,200萬元。法官在判刑時指出，該等罪行經精密策劃，並對受害者的所有人權益構成莫大風險。法官以12年為總量刑起點，判處被告監禁九年。

在香港特別行政區 訴 蘇浚鋒 (西九龍裁判法院刑事案件2022年第2641號)一案中，被告被控在選舉期間內藉公開活動煽惑另一人不投票或投白票或無效票的新訂罪行。被告涉嫌在其Facebook專頁發布煽惑瀏覽者在2021年立法會換屆選舉中投“空白票”的帖文。該帖文在上述選舉期間公開給公眾瀏覽。被告質疑有關法例條文是否合憲不遂後承認控罪，判處監禁兩個月，緩刑18個月。他已經以案件呈述方式向高等法院原訟法庭提出上訴。

分科四第 2B 組

在香港特別行政區 訴 黃天龍 (區院刑事案件2021年第869號)一案中，被告是一間酒店的工程師，負責監督該酒店所有工程和維修項目。在2017年12月至2019年10月期間，他就39個項目向一間工程公司的董事兼股東索取和接受非法回佣共47萬元。這些項目包括在該酒店和酒店餐廳進行冷氣、消防及照明工程，合約總額約為230萬元。被告承認索取並接受工程承辦商承辦工程的大約一半淨利潤，並要求更高回佣以安排酒店員工協助承辦商完成這些項目。被告承認一項串謀使代理人接受

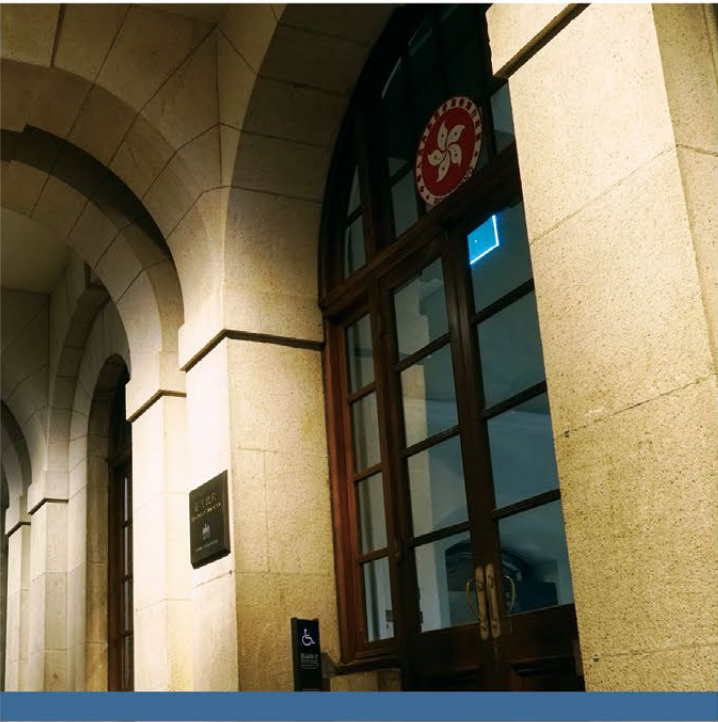
the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) respectively. The prosecution case was that while she was running as a candidate of the 2019 District Council Election, the defendant arranged 2 singers to provide singing entertainment to others. She also provided a free calligraphy class to others with the intent to induce others to vote for her in the said election. She was sentenced to a total imprisonment term of 4 months and 2 weeks. She has lodged an appeal against her conviction and sentence.

In *HKSAR v Wong Mary* HCCC 98/2020, the defendant was convicted on her own pleas of 7 counts of fraud, contrary to section 16A of the Theft Ordinance (Cap. 210). The defendant used forged powers of attorney through which the owners of the properties purportedly appointed her to be the lawful attorney in respect of the properties to apply for and obtain loans from different financial institutions and an individual. The victimized property owners were the relatives of the defendant, including her mother-in-law, brother-in-law and sister-in-law and her former insurance clients. The total amount involved in the fraud charges was over HKD32 million. In sentencing the defendant, the judge pointed out that the offences involved sophistication and posed profound risks to the victims' proprietary interest. A total starting point of 12 years was adopted and the defendant was sentenced to imprisonment of 9 years.

In *HKSAR v So Tsun-fung* WKCC 2641/2022, the defendant was charged with the new offence of inciting another not to vote or to cast a blank or invalid vote by way of public activity during an election period. It was alleged that he had displayed a post on his Facebook page which incited viewers to cast "blank votes" at the 2021 Legislative Council General Election. The said post was viewable by the public within the election period of the said election. After an unsuccessful challenge on the constitutionality of the statutory provision, the defendant pleaded guilty to the charge. He was sentenced to 2 months' imprisonment suspended for 18 months. He has lodged an appeal by way of case stated to the Court of First Instance of the High Court.

Section IV(2)(B)

In *HKSAR v Wong Tin-lung* DCCC 869/2021, the defendant was an engineer of a hotel responsible for supervising all engineering and maintenance works of the hotel. He had solicited and accepted illegal rebates totalling \$470,000 from a director-cum-shareholder of an engineering company for 39 projects between December 2017 and October 2019. The projects included air-conditioning, fire services and lighting works conducted at the hotel and a restaurant in the hotel, and the total contract sum amounted to about \$2.3 million. The defendant admitted that he



利益罪，判處監禁兩年。他也被勒令向酒店歸還約 40 萬元。

在香港特別行政區 訴 田德浩 (第一被告) 及 譚文燦 (第二被告) (區院刑事案件 2021 年第 645 號) 一案中，第一和第二被告分別是一間保險公司的高級分行經理和保險代理。2017 年 12 月，該保險公司接獲十份由第一被告提交的保單申請表，申請表據稱由九名人士以投保人身分簽署，並由第二被告以經辦代理身分簽署。事實上，第一和第二被告協議由第二被告訛稱為第一被告所處理的保單申請的經辦代理。第二被告並無銷售該十份保單或與相關投保人會面。涉案首期保費由第一被告安排支付，而第二被告則把從公司收取的佣金交予第一被告。涉案投保人中有五人確認從未申請有關保單，案情披露第一被告是在他們不知情下偽造有關申請表。兩名被告承認一項串謀詐騙罪，第一和第二被告分別判處監禁 37 個月和 12 個月。

在香港特別行政區 訴 何子俊 (九龍城裁判法院刑事案件 2021 年第 1381 號) 一案中，被告是一間保險公司的高級營業經理。他在每周會議上告訴團隊成員，團隊中最低職級的成員除可獲取基本月薪外，還會獲安排收取由公司發

had solicited and accepted roughly half of the net profits of the projects contracted to the works contractor. He had asked for a larger amount of rebate where staff members of the hotel were arranged to assist the works of the contractor in completing those projects. The defendant pleaded guilty to one count of conspiracy for an agent to accept advantages and was sentenced to two years' imprisonment. He was also ordered to pay about \$400,000 as restitution to the hotel.

In *HKSAR v Tin Tak-ho (D1) and Alvin Tam Man-chan (D2)* DCCC 645/2021, D1 and D2 were respectively a senior branch manager and insurance agent of an insurance company. In December 2017 the insurance company received 10 insurance policy application forms submitted by D1. The application forms were purportedly signed by nine persons as applicants and D2 as the handling agent. In fact, the duo had reached an agreement for D2 to falsely represent as the handling agent of insurance policy applications handled by D1. D2 did not procure the 10 insurance policies or meet the relevant applicants. The relevant initial premiums were arranged by D1 and D2 returned the commissions received from the company to D1. Five of the relevant applicants confirmed that they had not applied for the insurance policies and it was revealed that the relevant application forms were forged by D1 without their knowledge. Both defendants pleaded guilty to one count of conspiracy to defraud. D1 and D2 were respectively sentenced to 37 months and 12 months' imprisonment.

In *HKSAR v Ho Che-chun* KCCC 1381/2021, the defendant was a senior unit manager of an insurance company. He told his team members at weekly meetings that in order to maximise the commissions receivable by the whole team, arrangements would be made for the lowest ranking member in the team to receive commissions from the company apart from receiving basic monthly salaries. The relevant commissions received by those members should be passed to the defendant for handling. Between September and November 2017, the insurance company received eight insurance applications in which two down-line agents of the defendant were named as the handling agents. The defendant instructed the two down-line agents to return the commissions to him in five sums of cash, each ranged from \$38,000 to \$267,000, totalling over \$640,000. The defendant was found guilty of five charges of money laundering and was sentenced to 10 months' imprisonment. The defendant has filed notice of appeal against conviction.

In *HKSAR v Ngai Lok-kei*, DCCC 1171/2018, the defendant was an estate agent and the sole director of two property agencies (WTPA and GVP). He also held the shares of companies CJI and HVL. In early October 2014, the owner of a unit of a shopping

放的佣金，以盡量提高整個團隊可獲取的佣金，而有關成員在收取佣金後須交予被告處理。2017年9月至11月，該保險公司收到八份由被告兩名下線代理作為經辦代理的保單申請。被告指示該兩名下線代理把佣金分五筆現金退還給他，每筆金額介乎38,000至267,000元，合共超過64萬元。被告被裁定五項洗黑錢罪罪名成立，判處監禁十個月。被告已就定罪提出上訴通知。

在香港特別行政區 訴 蟻樂祺 (區院刑事案件 2018 年第 1171 號) 一案中，被告是一名地產代理及兩間地產代理公司 (盈信置業地產代理有限公司 (盈信) 和譽匯置業有限公司 (譽匯)) 的唯一董事，並持有愉欣投資有限公司 (愉欣) 和喜利創投有限公司 (喜利) 的股份。在 2014 年 10 月初，天水圍一個商場的一個鋪位的業主放售該鋪位，叫價 1,900 萬元。在 10 月中，被告安排原賣方與愉欣簽訂臨時買賣合約，成交價為 1,900 萬元，由譽匯作為該宗交易的地產代理。愉欣其後以確認人買賣方式將鋪位轉售予一對夫婦。被告向該對夫婦訛稱賣方愉欣叫價 3,200 萬元放售物業，並隱瞞自己在愉欣有實益權益，最終誘使對方以 2,856 萬元向愉欣購買物業，較原本叫價高出 956 萬元。此外，被告於 2014 年 12 月再向該對夫婦推介另一個位於九龍的物業，並隱瞞該物業的原賣方叫價 2,600 萬元放售物業。其後，喜利以 2,592 萬元購入該物業，由譽匯作為該宗交易的地產代理。被告最終誘使該對夫婦以約 3,143 萬元向喜利購買該物業，致使其多付約 551 萬元。被告被裁定兩項欺詐罪名成立，判處監禁六年半。他已就定罪和刑罰提出上訴通知。

在香港特別行政區 訴 朱冠輝 (西九龍裁判法院刑事案件 2022 年第 1457 號) 一案中，被告受僱於香港國際機場第三跑道項目的分判商，擔任一組水喉工的工頭。在 2020 年 9 月至 12 月期間，被告未經僱主批准，向組內兩名水喉工索取並接受非法回佣合共約港幣 6,300 元，以協助他們獲分判商聘用和繼續受僱。被告經審訊後被裁定七項代理人接受利益及一項代理人索取利益罪名成立，判處監禁合共六個月。

centre in Tin Shui Wai put up the unit for sale at \$19 million. In mid-October, the defendant arranged the original vendor and CJI to sign a provisional sale and purchase agreement at a price of \$19 million with GVP as the handling property agency. CJI later resold the unit to a couple by confirmatory sale. The defendant falsely represented to the couple that the vendor, CJI, offered to sell the property at \$32 million, and concealed from the couple his own beneficial interest in CJI. The defendant eventually induced the couple to purchase the property from CJI at \$28.56 million, which was \$9.56 million more than the original asking price. In addition, in December 2014, the defendant further recommended another property in Kowloon to the couple and concealed that the original vendor of the property offered to sell it at \$26 million. HVL subsequently purchased the property at \$25.92 million and GVP was the property agency of the transaction. The defendant eventually induced the couple to purchase the property from HVL at about \$31.43 million and caused them to pay about \$5.51 million more. The defendant was found guilty of two charges of fraud and was sentenced to six and a half years' imprisonment. He has filed notice of appeal against conviction and sentence.

In *HKSAR v Chu Kwun-fai* WKCC 1457/2022, the defendant was employed by a sub-contractor of the Third Runway Project of the Hong Kong International Airport to lead a team of plumbers. Between September and December 2020, the defendant, without the employer's approval, solicited and accepted illegal rebates totalling about HK\$6,300 from two plumbers in his team for assisting them to secure and continue their employment with the sub-contractor. The defendant was convicted after trial of seven counts of agent accepting an advantage and one count of agent soliciting an advantage, and was sentenced to a total of six months' imprisonment.

特別職務

Special Duties

刑事檢控科在 2020 年 4 月中成立特別職務組，以處理因 2019 年社會動盪而起的大量刑事案件。在 2022 年內，特別職務組律師在各級法院代表控方處理各種公眾秩序相關罪行的上訴和審訊，角色十分重要。

In mid-April 2020, a Special Duties (SD) Team was established within the Prosecutions Division to tackle the substantial number of criminal cases arising from the social unrest in 2019. Throughout 2022, SD Team's counsel played a significant role in prosecuting appeals and trials of a wide variety of public order related offences at all levels of Courts.



上訴

在 2022 年，特別職務組律師代表控方處理大量上訴，包括在上訴法庭及終審法院進行的上訴。這些案件往往涉及重要法律事宜，包括與《基本法》相關的事宜。為履行檢控職務，特別職務組律師須進行廣泛的法律研究和給予大量法律意見，公正客觀地協助法庭於社會和被告之間依法秉公行義。

以下是特別職務組律師在 2022 年處理的一些具重要性的上訴：

- (1) 在香港特別行政區 訴 蔡健瑜 [2022] HKCFA 27 案中，答辯人近距離尾隨一名便衣警務人員，被裁定參與非法集結罪成。答辯人向原訟法庭提出上訴，法官因未能就答辯人有所需參與意圖作出不可抗拒的推論，裁定答辯人的定罪上訴得直。控方以裁決造成實質及嚴重不公平為由，向終審法院提出上訴。

終審法院裁定控方上訴得直，並重申在香港特別行政區 訴 盧建民 (2021) 24 HKCFAR 302 案中討論有關非法集結的法律。終審法院裁定，根據裁判官的裁斷，答辯人意圖加入近距離纏繞該名警員的羣眾。答辯人對其他參與者的行為知情，並意圖作出拍攝該名警員的被禁止行為。鑑於案中沒有任何事情妨礙法官就答辯人有所需意圖作出不可抗拒的推論，法院回復定罪裁決和判刑。

- (2) 在香港特別行政區 訴 陳佐豪 (刑事上訴案件 2021 年第 14 號) 一案中，申請人被裁定參與暴動罪成。他以擔任義務急救員所以在案發現場出現為理由，就定罪申請上訴許可。上訴法庭駁回上訴許可申請，裁定在暴動中以聲稱急救員的身分行事，並非有效的抗辯理由。正如兩軍對壘，雙方或會派遣醫護兵上前線，但救人並不同中立，某國的醫護兵依然是該國的士兵。同理，即使某人在暴動中認定自己是急救員，但只要其造意和行為都符合“暴動”罪的元素，即視為參與暴動。

Appeal

In 2022, SD Team's counsel prosecuted a significant number of appeals including appeals at the Court of Appeal and the Court of Final Appeal. These cases often entail important legal matters including those related to the Basic Law. Extensive legal research and input are required from SD Team's counsel to fulfill their prosecutorial duties to fairly and objectively assist the Court in doing justice between the community and the accused according to law.

The following are some notable appeals prosecuted by SD Team's counsel in 2022:

- (1) In *HKSAR v Choy Kin-yue* [2022] HKCFA 27, the respondent was convicted of taking part in an unlawful assembly by trailing closely behind a plainclothes police officer. On appeal to the Court of First Instance, the judge allowed the respondent's appeal against conviction because he could not draw the irresistible inference that the respondent had the necessary participatory intent. The Prosecution appealed to the Court of Final Appeal (CFA) on the basis that substantial and grave injustice had been done.

In allowing the Prosecution's appeal, the CFA reiterated the law on unlawful assembly as discussed in *HKSAR v Lo Kin-man* (2021) 24 HKCFAR 302. The CFA held that according to the magistrate's findings, the respondent had the intent to become part of the group of people who pestered the officer at close distance. The respondent was aware of the other participants' conduct and intended to engage in his own prohibited act of filming the officer. There was nothing to preclude the judge from drawing the irresistible inference that the respondent had the requisite intent. The conviction and sentence were restored.

- (2) In *HKSAR v Chan Cho-ho* CACC 14/2021, the applicant was convicted of taking part in a riot. He applied for leave to appeal against conviction on the ground that he attended the scene as a volunteer first aider. In dismissing the leave application, the Court of Appeal held that acting as an alleged first aider during a riot was not in itself a valid defence. As with the scenario where two armies confront each other, both sides may have medical officers sent to the forefront, but saving lives is not equal to neutrality, and the medical officers of one country remain as soldiers of that country. Likewise, even if someone self-identifies as a first aider during a riot, as long as his intentions and actions meet the elements of the "riot" offence, he is considered to have participated in the riot.

- (3) 在香港特別行政區 訴 鄧希雯 (刑事上訴案件 2021 年第 164 號) 一案中, 申請人經審訊後被裁定於 2019 年 11 月 12 日在香港中文大學參與暴動罪成。在當日的暴動中, 有暴力示威者向警方投擲磚塊、硬物及汽油彈。警方進行驅散其間, 申請人被警務人員當場制服。申請人在審訊中作供, 承認在暴動現場逗留超過 13 分鐘。法庭經考慮相關證供後, 裁定申請人提出的上訴理由毫無合理可爭辯之處, 並駁回就定罪提出的上訴許可申請。
- (4) 在香港特別行政區 訴 畢慧芬 (刑事上訴案件 2021 年第 11 號) 一案中, 申請人經審訊後被裁定於 2019 年 8 月 13 日在香港國際機場參與暴動罪成。案中一名中國記者被暴動者束縛身體和公然襲擊。申請人被判監共四年三個月。上訴法庭在駁回她就定罪及判刑提出的上訴許可申請時, 裁定原審法官的事實認定和法律適用皆正確無誤, 沒有任何推翻定罪及判刑的理由。
- (5) 在香港特別行政區 訴 董栢輝 (刑事上訴案件 2021 年第 231 號) 一案中, 申請人在一名立法會議員進行競選活動時刺傷該名議員的胸口。申請人承認“有意圖而傷人”等多項控罪, 被判監共九年。法庭在駁回其上訴許可申請時, 裁定“有意圖而傷人”罪的控訴要旨在於施襲者意圖對受害人造成真正嚴重的身體傷害, 而受害人實際上是否受到真正嚴重的身體傷害屬於其次。鑑於申請人存心傷害受害人已久、精心策劃犯案和可能令受害人喪命等加刑因素, 以 12 年為量刑起點並非明顯過重或原則上錯誤。
- (6) 在香港特別行政區 訴 李鈞浩及其他人 (刑事上訴案件 2022 年第 31 號) 一案中, 各申請人串謀損壞輕鐵站設施, 經審訊後被裁定“串謀刑事損壞”罪罪成, 判監 18 個月。上訴法庭拒絕就定罪提出的上訴許可申請, 裁定各申請人如欲質疑記錄他們討論損壞設施過程的片段是否準確, 便需在審訊時作供和接受盤問, 否則案中根據控方證據所作的強而有力推論無可削弱或推翻。
- (3) In *HKSAR v Tang Hei-man* CACC 164/2021, the applicant was convicted after trial of taking part in a riot at the Chinese University of Hong Kong on 12 November 2019. During the riot, violent protestors threw bricks, hard objects and petrol bombs at the police. Upon dispersal, the applicant was subdued by police officer at scene. The applicant gave evidence at trial and admitted staying at the riot scene for over 13 minutes. Taking into account the evidence, the Court held that none of the grounds of appeal were reasonably arguable and dismissed the application for leave to appeal against conviction.
- (4) In *HKSAR v Pat Wai-fun Amy* CACC 11/2021, the applicant was convicted after trial of taking part in a riot at the Hong Kong International Airport on 13 August 2019, where a Chinese reporter was physically restrained and blatantly attacked by rioters. She was sentenced to a total of four years and three months' imprisonment. In dismissing her application for leave to appeal against conviction and sentence, the Court of Appeal held that the trial judge's finding of facts and application of law were correct, and there was no reason to quash the conviction and sentence.
- (5) In *HKSAR v Tung Pak-fai* CACC 231/2021, the applicant stabbed a legislative councilor on his chest during his election campaign activity. The applicant pleaded guilty to, *inter alia*, "wounding with intent" and was sentenced to a total of nine years' imprisonment. In dismissing the leave application, the Court held that the gravamen of the "wounding with intent" offence lies in the assailant's intention to cause the victim really serious bodily harm and whether the victim in fact suffered from really serious bodily harm is of secondary significance. Taking into account the aggravating features including the longstanding intention to harm the victim, careful planning and the potential fatal consequence, a starting point of 12 years was not manifestly excessive or wrong in principle.
- (6) In *HKSAR v Li Kwan-ho and Others* CACC 31/2022, the applicants conspired together to damage the facilities of Light Rail Stations and were convicted of "conspiracy to commit criminal damage" after trial. They were sentenced to 18 months' imprisonment. In refusing the application for leave to appeal against conviction, the Court of Appeal held that if the applicants were to challenge the accuracy of the recordings which captured their discussions about damaging the facilities, it was incumbent upon them to give evidence at trial and be cross-examined, otherwise there was nothing to weaken or rebut the strong and compelling inference to be drawn from the Prosecution's evidence.

以案件呈述方式上訴

如法院就某案件作出的無罪裁決有悖常理（意即任何明理的法院在妥為顧及相關考慮因素並向本身發出適當指示後均不可能達致這個裁決）或在法律論點上有錯，控方可在適當情況下採取跟進行動，包括：

- (i) 根據《區域法院條例》（第 336 章）第 84 條就區域法院審理的案件以案件呈述方式向上訴法庭提出上訴；以及
- (ii) 根據《裁判官條例》（第 227 章）第 105 條就裁判法院審理的案件以案件呈述方式向原訟法庭提出上訴。

以香港特別行政區 訴 林曉樺（高院裁判法院上訴 2022 年第 32 號）案為例，控方在被告被裁定“阻撓警務人員”和“未能出示身份證明文件以供查閱”罪名不成立後，以案件呈述方式提出上訴。法庭裁定，原審裁判官裁定被告已符合出示身份證明文件供警務人員查閱的要求及其行為不構成阻撓，實有悖常理。法庭裁定，被告手持身份證但不展示其上個人資料，這樣不足以算作出示身份證明文件“以供查閱”。法庭下令把案件發還原審裁判官重新考慮。

覆核刑罰

根據《刑事訴訟程序條例》（第 221 章）第 81A 條，如法庭判處的刑罰並非經法律認可、原則上錯誤或明顯不足，律政司司長可向上訴法庭申請覆核刑罰。例如：

- (1) 在律政司司長 訴 李文錡（覆核申請 2021 年第 17 號）一案中，答辯人及其他人在某馬路交界處聚集，並向警員投擲金屬罐和玻璃瓶。答辯人經審訊後被裁定參與非法集結和襲警罪成。判刑當日，原審裁判官考慮到答辯人因違反宵禁令已還押超過五個月，判處 120 小時社會服務令。控方申請覆核刑罰，上訴法庭裁定鑑於本案案情嚴重，社會服務令並非恰當的判刑選項，適當的刑罰應是即時監禁。法庭考慮

Appeal by way of Case Stated

When the Court's decision of acquittal in the case is perverse (meaning no reasonable Court, applying its mind to the proper considerations and giving itself the proper directions, could have reached this decision) or erroneous in point of law, the Prosecution may take follow-up action under appropriate circumstances, including:

- (i) Appeal by way of case stated to the Court of Appeal under section 84 of the District Court Ordinance (Cap. 336) for cases tried in the District Court; and
- (ii) Appeal by way of case stated to the Court of First Instance under section 105 of the Magistrates Ordinance (Cap. 227) for cases tried in the magistrate's court.

As an example, in *HKSAR v Lam Hiu-wa* HCMA 32/2022, the Prosecution appealed by way of case stated after the defendant was acquitted of “obstructing police officer” and “failing to produce proof of identity for inspection”. The Court held that the trial magistrate was perverse in ruling that the defendant had met the requirement of producing identity proof to police officer, and that her acts did not amount to obstruction. The Court found that the defendant's manner in presenting her identity card, holding the card in hand but did not display her personal data therein, could not suffice as production “for inspection”. The case was ordered to be remitted to the trial magistrate for reconsideration.

Review of Sentence

Under section 81A of the Criminal Procedure Ordinance (Cap. 221), when the sentence imposed by the Court is not authorized by law, is wrong in principle or is manifestly inadequate, the Secretary for Justice may apply to the Court of Appeal to review the sentence. For example:

- (1) In *Secretary for Justice v Lee Man-kei* CAAR 17/2021, the respondent and others gathered at a road junction and threw metal cans and glass bottles at the police. He was convicted after trial of taking part in an unlawful assembly and assaulting police officers. On the date of sentence, taking into account that the respondent had been remanded for over five months for breach of curfew, the trial magistrate imposed a 120 hours' community service order. Upon application for review of sentence, the Court of Appeal held that in view of the seriousness of the case, community

到多項因素，包括答辯人已完成 116 小時社會服務，因此行使酌情權不予改判。

- (2) 在律政司司長訴梁茵琳及其他人(覆核申請 2021 年第 14 號)一案中，各答辯人被裁定在某商場參與非法集結罪成，判處 240 小時社會服務令。上訴法庭裁定，各答辯人並無顯示真誠悔意，而有關刑罰屬原則上錯誤和明顯不足。法庭考慮到各答辯人的背景、他們已完成社會服務令，加上覆核時通常給予刑期扣減以及公眾利益，因此行使酌情權不予改判。

審訊

2022 年，特別職務組律師代表控方處理各級法院的審訊，角色至為重要。特別職務組主力負責檢控各類公眾秩序相關罪行，包括暴動、非法集結、管有炸藥、縱火、有意圖而傷人、管有攻擊性武器等。特別職務組律師就上述審訊提出檢控時，必需徹底地審查和分析相關資料，並加以慎密考慮，以應對各種法律問題和抗辯理由。

特別職務組律師面對的其中一項特別挑戰是處理有關大型暴動事件的檢控，當中涉及眾多被告和大量證據。例如：

- (1) 2019 年 9 月 29 日，金鐘政府總部(政總)和金鐘道一帶發生大型暴動，11 宗案件中的 96 名被告被控“暴動”罪。案發時示威者向政總投擲汽油彈和撞擊政總玻璃、破壞和焚燒公眾地方的物件、堵塞主要道路，導致交通嚴重受阻。警方施行驅散，示威者設置路障，向警務人員投擲磚塊和汽油彈。截至 2022 年 12 月 31 日，六宗案件中的 35 名被告被裁定“暴動”罪罪成，被判入勞教中心/教導所或判監最長 60 個月(區院刑事案件 2020 年第 288 及 293 號、區院刑事案件 2020 年第 969 號、區院刑事案件 2021 年第 239 號、區院刑事案件 2021 年第 237 號、區院刑事案件 2021 年第 238 號及區院刑事案件 2020 年第 294 號)。

service order was not a proper sentencing option and the appropriate sentence should be one of immediate imprisonment. Having considered various factors including the respondent's completion of 116 hours of community service, the Court exercised its discretion not to disturb the original sentence.

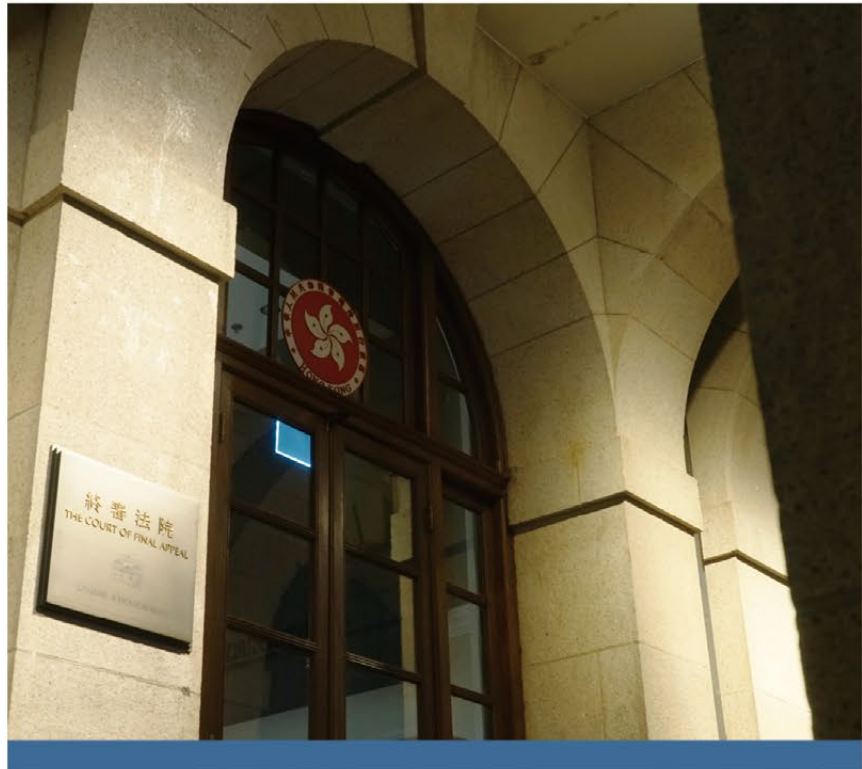
- (2) In *Secretary for Justice v Leung Yan-lam and Others* CAAR 14/2021, the respondents were convicted of taking part in an unlawful assembly in a shopping mall and were sentenced to 240 hours' community service order. The Court of Appeal held that the respondents had not demonstrated genuine remorse, and such sentences were wrong in principle and manifestly inadequate. Having considered the respondents' background, their completion of the community service order, the usual discount to be given on review and the public interest, the Court exercised its discretion not to disturb the original sentences.

Trial

In 2022, SD Team's counsel played a pivotal role in the prosecution of trials across all level of Courts. SD Team primarily focuses on the prosecution of a wide range of public order related offenses including riots, unlawful assemblies, possession of explosives, arson, wounding with intent, and possession of offensive weapons, etc. SD Team's counsel have to conduct a thorough review and analysis of the relevant materials in prosecuting these trials. Meticulous consideration is also necessary to address a wide spectrum of legal issues and defense challenges.

One particular challenge to SD Team's counsel is to handle and prosecute mass riot incidents that involve large number of defendants and voluminous evidence. For example:

- (1) On 29 September 2019, mass riot took place at the area of Central Government Offices and Queensway in Admiralty. 96 defendants were charged with "riot" in 11 cases. During the event, protesters threw petrol bombs towards and smashed glasses of the Central Government Offices, vandalized and burnt objects in public places, blocked major roads and caused serious disruption to traffic. Upon dispersal, protesters set up barricades, hurled bricks and petrol bombs towards police officers. As of 31 December 2022, 35 defendants were convicted of "riot" in six cases and were sentenced to detention centre, training centre or to imprisonment ranging up to 60 months (DCCC 288 & 293/2020, DCCC 969/2020, DCCC 239/2021, DCCC 237/2021, DCCC 238/2021 and DCCC 294/2020).



(2) 2019年11月18日，逾千名示威者在油麻地窩打老道與咸美頓街之間的彌敦道一帶集結，並向警方投擲汽油彈。其後，213人被控“暴動”罪和其他罪行。涉案被告分別被歸入17宗案件處理。截至2022年12月31日，17名被告中有部分承認控罪，餘下被告經審訊後被裁定“暴動”罪罪成。各名被告被判入教導所或判監最長63個月（區院刑事案件2021年第438號、區院刑事案件2020年第751號，以及區院刑事案件2020年第768號及2021年第409號）。

除上述大型暴動案件外，特別職務組律師於2022年也在下列重要審訊中出庭檢控，以及出席認罪和判刑的聆訊：

(1) 在香港特別行政區訴劉子龍及陳彥廷（高院刑事案件2020年第322號）一案，被告及其他人於2019年11月13日向試圖清理被堵塞路面的途人投擲磚塊。案中受害人被磚塊擊中，其後證實死亡。兩名被告被控“謀殺”、“有意圖而傷人”及“暴動”罪。經審訊後，陪審團裁定兩名被告參與暴動罪成，同被判監五年六個月。

(2) On 18 November 2019, more than a thousand of protestors assembled and threw petrol bombs at the police in the area of Nathan Road between Waterloo Road and Hamilton Street in Yau Ma Tei. A total of 213 persons were subsequently charged with “riot” and other offences. The defendants were split into 17 cases. As of 31 December 2022, 17 defendants either pleaded guilty to or were convicted after trial of “riot”. They were sentenced to training centre or to imprisonment ranging up to 63 months (DCCC 438/2021, DCCC 751/2020, and DCCC 768/2020 & DCCC 409/2021).

In addition to the above mass riot cases, SD Team’s counsel also prosecuted the following notable trials and attended the relevant plea and sentence hearings in 2022:

(1) In *HKSAR v Lau Tsz-lung Kelvin & Chan Yin-ting* HCCC 322/2020, the defendants and others hurled bricks at passers-by who were trying to clear a blocked road on 13 November 2019. The victim was hit by a brick and was certified dead thereafter. The defendants were charged with “murder”, “wounding with intent” and “riot”. After trial, the jury returned a verdict that the defendants were guilty of taking part in the riot. Both defendants were sentenced to five years and six months’ imprisonment.

(2) In *HKSAR v Ching Wai-ming* DCCC 5/2022, a riot took place at Yuen Long MTR Station on 21 July 2019 during which the

- (2) 在香港特別行政區 訴 程偉明 (區院刑事案件 2022 年第 5 號) 一案中，元朗港鐵站在 2019 年 7 月 21 日發生暴動，其間暴動者以藤條及其他武器襲擊站內其他人。案中被告曾參與該次暴動，以藤條並揮拳襲擊多人，經審訊後被裁定“暴動”及“串謀傷人”罪罪成，判監共四年三個月。
- (3) 在香港特別行政區 訴 周柏均及另一人 (區院刑事案件 2020 年第 475 號) 一案中，多名示威者於 2019 年 11 月 11 日在西灣河文娛中心外的過路處設置非法路障。一名軍裝警務人員接報到場試圖移除路障。當時羣眾聚集叫囂辱罵該名警務人員，兩名被告與該名警務人員發生衝突，並數度試圖搶奪警槍。經審訊後，兩名被告被裁定“阻撓警務人員”及“企圖搶劫”警槍罪罪成。其中一名被告同時被裁定“企圖從合法羈押逃脫”罪罪成。兩人同被判監共六年。
- (4) 在香港特別行政區 訴 伍文浩 (區院刑事案件 2021 年第 212 號) 一案中，被告是 Telegram 頻道“SUCK Channel”的擁有人兼管理員，而“SUCK Channel”曾發布大量煽惑訊息。被告經審訊後被裁定串謀煽惑他人干犯七項不同的罪行，例如縱火、刑事損壞、暴動等。法庭考慮到有關罪行嚴重，判處被告監禁合共六年六個月。
- (5) 香港特別行政區 訴 馬孝文及其他人 (區院刑事案件 2021 年第 22 號) 一案涉及在尖沙咀發生的大型暴動，其間有過百名示威者在尖沙咀警署外面及彌敦道一帶聚集，有示威者向在場警員投擲汽油彈。七名被告被裁定“暴動”罪罪成，判監 36 至 45 個月不等。
- (6) 在香港特別行政區 訴 黃鈞華及其他人 (區院刑事案件 2021 年第 189、210 及 809 號) 一案中，銅鑼灣在 2020 年 7 月 1 日發生暴動，其間第一被告用刀刺傷一名警務人員的左上臂，導致後者身體受到嚴重傷害。之後，被告擬乘坐飛機逃往倫敦，但在航班起飛前在機上被警方緝捕。他承認“暴動”及“有意圖而傷人”罪，被判監 rioters attacked others in the station with rattan stick and other weapons. The defendant took part in the riot and assaulted various persons by rattan stick and by fist. After trial, the defendant was convicted of “riot” and “conspiracy to wound”. He was sentenced to a total of four years and three months’ imprisonment.
- (3) In *HKSAR v Chow Pak-kwan and another* DCCC 475/2020, a number of protesters set unlawful road blockage at the crossings outside Sai Wan Ho Civic Centre on 11 November 2019. A uniformed police officer responded to the scene and tried to remove the blockage. When the congregated crowd were shouting abuse at the officer, the two defendants confronted the officer and made repeated attempts to snatch his revolver. After trial, the two defendants were convicted of “obstructing a police officer” and “attempted robbery” of a police revolver. One defendant was also convicted of “attempt to escape from lawful custody”. Both of them were sentenced to a total of six years’ imprisonment.
- (4) In *HKSAR v Ng Man-ho* DCCC 212/2021, the defendant was the owner and administrator of a Telegram Channel named “SUCK Channel” in which substantial number of inciting messages were published. He was convicted after trial of conspiracy to incite others to commit seven different offences, e.g., arson, criminal damage, riot, etc. The Court considered the offences to be serious and sentenced the defendant to a total of six years and six months’ imprisonment.
- (5) *HKSAR v Mah Hau-man Herman & others* DCCC 22/2021 concerned a mass riot in Tsim Sha Tsui, where over 100 protesters gathered outside Tsim Sha Tsui Police Station and along Nathan Road. Protesters hurled petrol bombs against police at scene. Seven defendants were convicted of “riot”. They were sentenced to imprisonment ranging from 36 to 45 months.
- (6) In *HKSAR v Wong Kwan-wa and others* DCCC 189, 210 & 809/2021, a riot broke out in Causeway Bay on 1 July 2020. During the riot, the 1st defendant stabbed a police officer’s left upper arm with a knife, causing him grievous bodily harm. Later, he boarded a plane in order to flee to London. Before the flight took off, the Police located and arrested him. He pleaded guilty to “riot” and “wounding with intent” and was sentenced to a total of five years’ imprisonment. Meanwhile, the 1st defendant’s girlfriend searched for flight information, purchased a ticket for the 1st defendant for flying from London to Taipei, and accompanied him to the airport. After trial, she was convicted of “doing an act or a series of acts tending and intended to pervert the course of public justice”

合共五年。與此同時，第一被告的女朋友為第一被告搜尋航班資料和購買由倫敦飛往台北的機票，以及陪同他到機場。她經審訊後被裁定“作出一項或一連串傾向並意圖妨礙司法公正的作為”罪罪成，判監12個月。

- (7) 在香港特別行政區 訴 陸家裕及其他人 (區院刑事案件 2020 年第 665 及 667 號) 一案中，愛丁堡廣場在 2019 年 12 月 22 日發生暴動，其間一羣示威者襲擊警方。一名被告踢向一名警員的下背，另一名被告則試圖拉走襲擊者，讓其免被逮捕。經審訊後，他們被裁定參與暴動罪成，同被判處監禁共三年九個月。
- (8) 在香港特別行政區 訴 唐建邦及其他人 (區院刑事案件 2021 年第 65 及 66 號) 一案中，示威者於 2020 年 5 月 24 日在銅鑼灣發生的暴動中堵路、放火和損壞商舖及公共設施。一名律師在暴動期間遭示威者追打，被人用雨傘及硬物殘暴地襲擊，引致大量出血，身體多處受傷。案中被告曾參與上述襲擊，其中三人承認“非法集結”及“有意圖而傷人”罪，被判入教導所或監禁最長 25 個月。餘下一名被告本來不認罪，但其後決定承認“暴動”及“有意圖而傷人”兩項控罪。法院判他監禁 34 個月。
- (9) 在香港特別行政區 訴 尹兆堅；黃碧雲；林卓廷 (東區裁判法院刑事案件 2018 年第 2993 號、西九龍裁判法院刑事案件 2020 年第 3842 號、東區裁判法院刑事案件 2021 年第 757 號及東區裁判法院刑事案件 2021 年第 758 號) 案中，三名前立法會議員被裁定干犯《立法會 (權力及特權) 條例》(第 382 章) 第 17(c) 及 19(b) 條的控罪罪成。該等罪行涉及四宗致令立法會委員會會議程序中斷的擾亂事件，以及干預和妨礙立法會保安人員的事件。各名被告承認控罪，被判監三至七星期不等。

儘管工作量繁多，挑戰前所未見，特別職務組律師仍致力嚴格遵照《檢控守則》履行檢控職務。

and was sentenced to 12 months' imprisonment.

- (7) In *HKSAR v Luk Ka-yu and others* DCCC 665 & 667/2020, a riot took place at Edinburgh Place on 22 December 2019 during which a group of protestors attacked the police. One defendant kicked the lower back of a police officer while the other defendant tried to pull the attacker away to prevent him from being arrested. After trial, they were found guilty of taking part in the riot and were both sentenced to a total of three years and nine months' imprisonment.
- (8) In *HKSAR v Tong Kin-pong & others* DCCC 65 & 66/2021, a riot happened in Causeway Bay on 24 May 2020 with protestors blocking the road, setting fire and damaging shops and public facilities. During the riot, a solicitor was chased and brutally attacked by protestors with umbrella and hard objects, causing extensive bleeding and various injuries on the body. The defendants were involved in the said attack. Three of them pleaded guilty to "unlawful assembly" and "wounding with intent". They were sentenced to training centre or to imprisonment ranging up to 25 months. The remaining defendant originally pleaded not guilty but subsequently decided to plead guilty to both "riot" and "wounding with intent". The Court sentenced him to 34 months' imprisonment.
- (9) In *HKSAR v Wan Siu-kin Andrew; Wong Pik-wan; Lam Cheuk-ting* ESCC 2993/2018, WKCC 3842/2020, ESCC 757/2021, ESCC 758/2021, three ex-Legislative Councillors were convicted of charges under sections 17(c) and 19(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). These offences concerned four incidents of disturbances which interrupted the proceedings of Legislative Council committee meetings; and interferences and obstruction of security officers of the Legislative Council. The defendants pleaded guilty and were sentenced to imprisonment ranging from three to seven weeks.

Despite the heavy workload and unprecedented challenges, Counsel in the SD Team are committed to discharge their prosecutorial duties in strict compliance with the Prosecution Code.

外展及培訓

Outreach and Training

檢控週 2022

檢控週 2022 於 8 月 3 至 10 日舉行，主題是「秉行公義·堅守法治」。這項活動的目的是提倡法治並加深公眾對香港刑事司法制度的認識。公眾對香港刑事司法制度的運作和本科的工作所知越多，便對本港法治和本科維護法治的工作越有信心。

本年共有約 650 名學生參加檢控週 2022 的各項活動，包括「義」問「義」答法律問答比賽、標誌創作比賽、參觀法庭、由檢控官主持的簡介會及模擬法庭審訊。我們望能通過這些活動，加深公眾對本港刑事司法制度的認識，鼓勵香港人尤其是年輕一代秉承守法觀念和尊重法治精神。

Prosecution Week 2022

The Prosecution Week 2022 was held between 3 and 10 August and the theme of the event was "Administering Justice under the Rule of Law". The aim of this event is to promote the Rule of Law and to enhance public awareness of the Hong Kong criminal justice system. The more the public is being informed of the operation of our criminal justice system and the work of the Division, the stronger the public's confidence in the Rule of Law in Hong Kong and the Division's role in upholding the same would be.

This year, about 650 students participated in various activities of the Prosecution Week 2022, including a fun quiz titled "Justice Cup", a logo design competition, visits to the Courts, briefings led by public prosecutors and mock court exercises. Through such activities, the people in Hong Kong, especially our younger generations, had been encouraged to maintain a law-abiding attitude and show respect for the Rule of Law with a better awareness of our criminal justice system.



持續法律進修課程

一如往年，本科在 2022 年舉辦了多個研討會和交流會，由來自與檢控相關界別富經驗的演講嘉賓主講，當中包括：

- “虐待兒童和性罪行” — 在 6 月 10 日舉辦，由副刑事檢控專員高寶翠女士及兩名高級檢控官程慧明女士和林曉敏女士主講
- “援引流動裝置證據及審訊經驗分享” — 在 8 月 11 日舉辦，由副刑事檢控專員萬德豪先生及高級檢控官林曉敏女士主講
- “數碼法證最新發展及網絡罪行調查新近挑戰” — 在 9 月 8 日舉辦，由警務處網絡安全及科技罪案調查科高級督察姜婉婷女士及督察楊家泰先生主講



- “性罪行的醫學法律範疇” — 在 11 月 4 日舉辦，由衛生署法醫科章曉妮醫生主講
- “從心理學角度了解兒童證人和精神上無行為能力證人” — 在 11 月 11 日舉辦，由警務處警察臨床心理學家馮浩堅先生主講
- “專題：(i) 處理虐待兒童和精神上無行為能力人士案件的程序及 (ii) 與易受傷害證人錄影會面的常規和提問技巧” — 在 12 月 2 日舉辦，由社會福利署高級社會工作主任張林淑儀女士及警務處高級警司李經晞女士主講



Continuing Legal Education

As in previous years, seminars and sharing sessions were conducted by experienced guest speakers from sectors related to prosecution in 2022. Such seminars and sharing sessions included:

- Child abuse and sexual offences, by Ms Catherine Ko, Deputy Director of Public Prosecutions and two Senior Public Prosecutors, Ms Jasmine Ching and Ms Human Lam on 10 June
- Adducing evidence of mobile devices and trial experience sharing, by Mr Jonathan Man, Deputy Director of Public Prosecutions and Ms Human Lam, Senior Public Prosecutor on 11 August
- Latest development in digital forensics and recent challenges in cybercrime investigation by Ms Doris Keung, Senior Inspector and Mr Carter Yeung, Inspector, of the Cyber Security and Technology Crime Bureau of the Police on 8 September
- Medicolegal aspects of sexual offences by Dr Clarice Cheung, Forensic Pathologist of the Department of Health on 4 November
- Understanding child and mentally incapacitated person witnesses from a psychological perspective by Mr Michael Fung, Clinical Psychologist of the Police on 11 November
- Topics on (i) procedures for handling child and mentally incapacitated person abuse cases and (ii) protocol and questioning skills for video-recorded interview with

實習計劃

2022 年，多名內地機構官員獲安排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和香港如何進行檢控工作。實習人員包括：

- 中國共產黨中央紀律檢查委員會李雍女士 (5 月 16 至 20 日)
- 青島海關唐嫻嫻女士 (5 月 16 至 20 日)
- 天津市監獄管理局崔健先生 (5 月 16 至 20 日)
- 最高人民法院胡世儀女士 (5 月 30 日至 6 月 2 日)
- 國務院港澳事務辦公室黃龔先生 (6 月 20 至 27 日)

中學法律講座

本司在 2021 年首次推出「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、濫用藥物及電腦網絡罪行，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。

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 2022 年，共有 32 名私人執業的初級大律師參與這項計劃。

vulnerable witnesses by Mrs Chang Lam Sook-ye, Senior Social Work Officer of the Social Welfare Department and Ms Frances Lee, Senior Superintendent of the Police on 2 December

Attachment Programme

In 2022 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:

- Ms Li Yong, from the Central Commission for Discipline Inspection of the Chinese Communist Party (16-20 May)
- Ms Tang Xianxian, from the Qingdao Customs (16-20 May)
- Mr Cui Jian, from the Tianjin Prison Administration Bureau (16-20 May)
- Ms Hu Shiyi, from the Supreme People's Court (30 May-2 June)
- Mr Huang Long, from the Hong Kong and Macao Affairs Office of the State Council (20-27 June)

Law Talks for Secondary Schools

The "Rule of Law Enlightenment" Programme was first introduced by the Department of Justice in 2021 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 and cybercrime. 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.

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

刑事訟辯課程

我們在 2022 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 2022 年 7 月舉辦為期 14 天的部門檢控人員培訓課程，共有 95 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。

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。

has provided valuable learning opportunities to junior counsel for gaining experience and skills in prosecuting cases of complexity and sensitivity. A total of 32 junior counsel in private practice participated in the programme in 2022.

Criminal Advocacy Course

In 2022, 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 2022. Attended by 95 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.

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



法庭檢控主任培訓

在 2021 年的下半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。

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 the second half of 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 2022 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 14,610 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，89.5% 符合本科的服務承諾，即在 14 個工作天內作出回覆，而 2021 年則是 88.4%。

工作量

審訊籌備及提供法律指引的工作

本科在 2022 年提供法律指引的次數較 2021 年減少 5.2%。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 2022, in addition to court work, the Division gave a total of 14,610 legal advice on criminal matters to government bureaux and law enforcement agencies. Of all the requests for legal advice, 89.5% were replied to within 14 working days in accordance with our performance target, as compared to 88.4% in 2021.

Caseload

Trial preparation and advisory work

The number of legal advice given in 2022 decreased by 5.2% as compared to 2021. 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.



	2021	2022
提供法律指引次數 Number of legal advice given	15,410	14,610
籌備由原訟法庭審理的案件數目 Number of cases prepared for the Court of First Instance	256	223
籌備由區域法院審理的案件數目 Number of cases prepared for the District Court	1,120	1,170

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

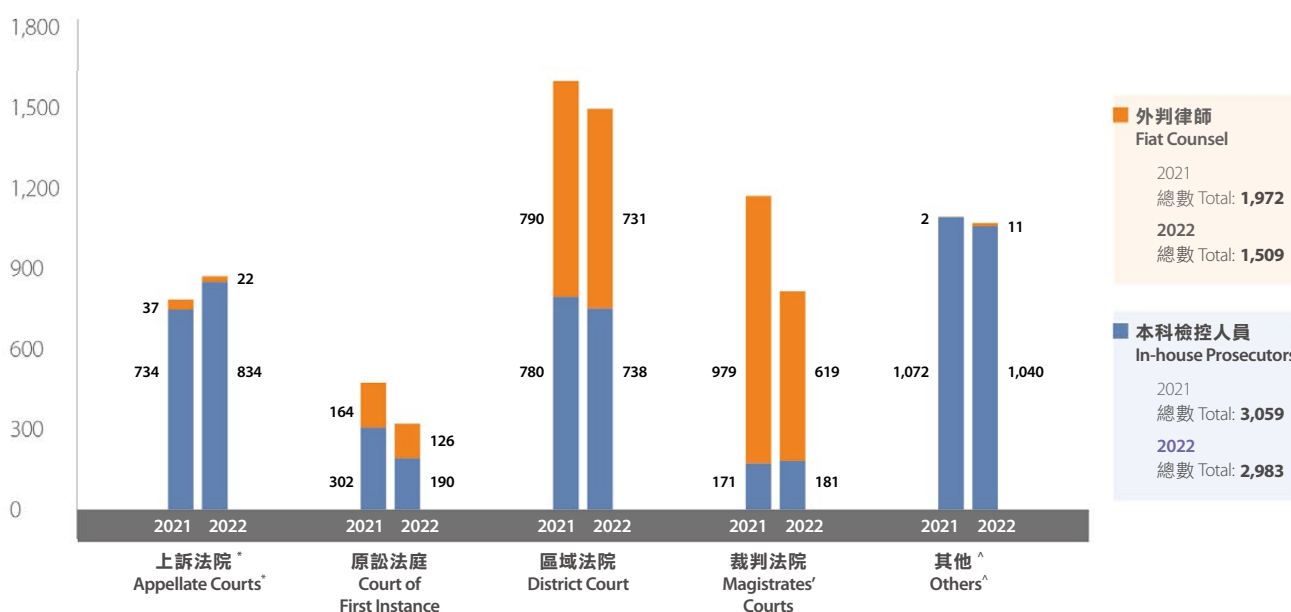
年內處理的案件總數錄得下跌。與 2021 年相比，由本科檢控人員和外判律師處理的案件數目分別下跌 2.5% 和 23.5%。

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

There was a decrease in the total number of cases conducted for the year. As compared to 2021, the number of cases conducted by in-house prosecutors and fiat counsel decreased by 2.5% and 23.5% respectively.

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

2021

2022

法庭檢控主任及外判律師代替法庭檢控主任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

148,282

134,756

案件的結果

Case Outcomes

定罪率

Conviction rates

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*。

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					
2021	1,448	2,077	1,587	56.7%	69.0%
2022	861	1,376	1,170	54.0%	65.7%
區域法院 District Court					
2021	884	198	95	67.6%	91.9%
2022	784	298	80	78.8%	93.1%
原訟法庭 Court of First Instance					
2021	220	64	62	50.8%	82.1%
2022	173	45	38	54.2%	85.2%

* 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	
	2021	2022	2021	2022
終審法院上訴證明書： Certificate to appeal to the Court of Final Appeal:				
得直 Allowed	1	3	0	0
駁回 Dismissed	17	24	0	1
撤銷 Withdrawn	0	1	0	1
待決 ^註 Pending ^{Note}	5	2	0	1
總數 Total	23	30	0	3
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	9	1	0	4
駁回 Dismissed	54	22	0	0
撤銷 Withdrawn	4	1	0	1
待決 ^註 Pending ^{Note}	8	36	0	1
總數 Total	75	60	0	6
向終審法院提出的上訴： Appeal to the Court of Final Appeal:				
得直 Allowed	4	2	0	2
駁回 Dismissed	5	0	0	0
撤銷 Withdrawn	0	0	0	0
待決 ^註 Pending ^{Note}	1	0	0	2
總數 Total	10	2	0	4

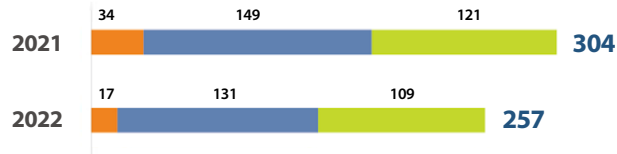
註 – 指於該年提出但尚未完成處理的申請數目。

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

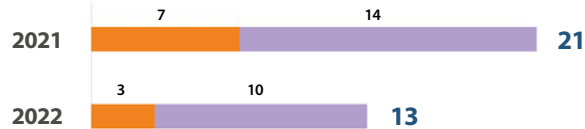
上訴法庭

Court of Appeal

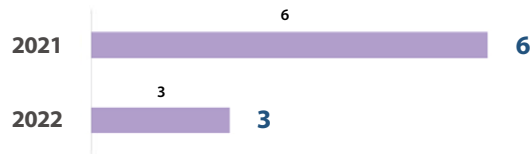
被告提出的上訴
By Defendants



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



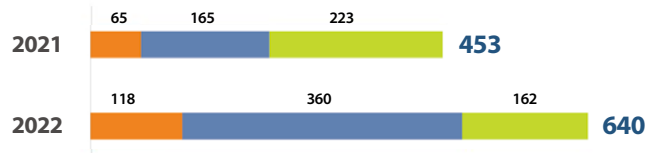
刑事檢控科以案件呈述方式提出的上訴
By Prosecutions Division by way of case stated



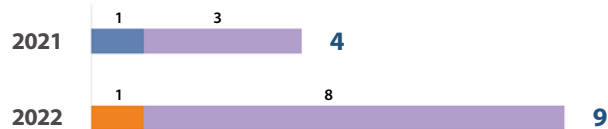
原訟法庭

Court of First Instance

被告提出的上訴
By Defendants



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



■ 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。

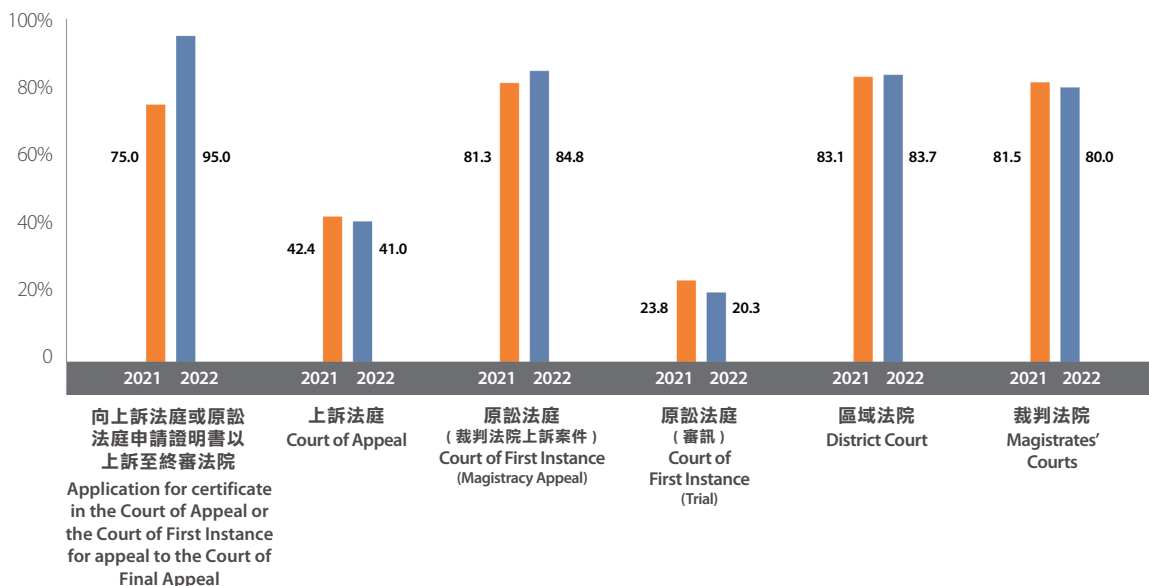
Note - This refers to the number of applications initiated and had not yet been concluded in the respective year.

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)



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Acknowledgements

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