

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-government 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天）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.