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。

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.

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

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 蔡文遨* [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.

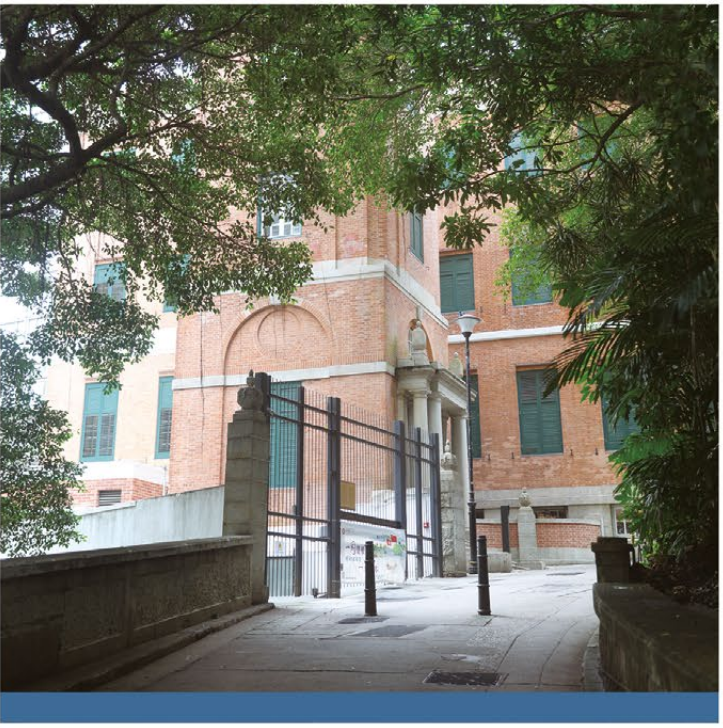
Counsel also advise on whether or not an appeal should be lodged by the Prosecution in a particular DC case by way of case stated under section 84 of the District Court Ordinance (Cap. 336) in respect of an acquittal by a District Judge, and whether or not an application for review should be made under 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 條轉交的三個法律問題。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裁決；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／或指示作出的無罪裁決提出上訴。

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，包括嚴重虐打、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".