



香港刑事檢控
Prosecutions
Hong Kong
2023



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

2023

PROSECUTIONS

HONG KONG

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 2023 年的工作回顧。

本科在 2023 年邁進新里程，除處理繁重的工作外，更成立了科技罪行分科，以打擊近年日趨猖獗和精密的科技罪行。隨着疫情過去，我們亦積極推進國際外展事務。

本科人員一如既往，履行社會責任，公平公正、不偏不倚地尋求和伸張公義，時刻展現捍衛法治的堅定決心，令我引以為傲。我們會繼續秉持《基本法》第六十三條奉為圭臬的獨立檢控權，以正直之心、專業精神和滿腔熱忱秉行公義。

回顧 2023 年，承蒙司長和一眾同事在年內一直鼎力支持，本科工作成果豐碩，謹此衷心致謝。我有機會與各位共事，同心協力維護公義和法治，實在榮幸之至。



刑事檢控專員

楊美琪

2024 年 6 月 17 日

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

17 June 2024

Dear Secretary for Justice,

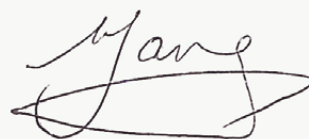
I am pleased to submit to you the Yearly Review of the Prosecutions Division for 2023.

2023 was a milestone year for the Division. Aside from handling heavy caseload, the Division established the Technology Crime Sub-division to tackle the increasing prevalence and sophistication of technology crimes in recent years. We also played an active role in international outreach following the end of the pandemic.

I am proud to say that officers of the Division have continued to discharge their duty to the community to seek and deliver justice in a fair, impartial, and even-handed manner, demonstrating at all times an unwavering commitment to the rule of law. We will continue to safeguard prosecutorial independence as enshrined in Article 63 of the Basic Law, while upholding justice with integrity, professionalism, and passion.

Looking back at the remarkable achievements of the Division in 2023, it remains for me to express my heartfelt and sincere gratitude to you and my colleagues for the continued support I have received throughout the year. I am most fortunate to be able to work with all of you in furthering our collective endeavor to uphold justice and the rule of law.

Yours sincerely,

A handwritten signature in purple ink, appearing to read 'Maggie Yang', with a large, stylized flourish underneath.

(Maggie Yang)
Director of Public Prosecutions



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刑事檢控專員的序言 Director's Overview

刑事檢控科在 2023 年邁進新里程。本科在 2022 年重組架構後運作效率提升，年內成立了新分科，以提升應對最新犯罪趨勢的專業技能。本科在年內也重踏世界舞台，與海外司法管轄區就備受國際關注的相關刑事法律事宜展開對話和合作。回顧 2023 年，我可以驕傲並且堅定地說，本科繼續以正直之心、專業精神和滿腔熱忱悉力追求公義。

本年度工作回顧的主題為“秉正行義 恪盡己任”，正扼要說明了檢控人員作為秉行公義者肩負服務社會和維護法治的崇高使命。從作出檢控決定、處理審訊和上訴案件，以至檢討和制定檢控政策，檢控人員的工作本質上以公眾為中心，直接影響社會和市民。因此，在執行任何方面的檢控工作時，我們都有責任公平地行事並以公眾利益為依歸，秉持熱心服務公眾的精神履行職責。

正因為公正行事是我們的職責，提出檢控的目的並非是要達致定罪，而是確保在所有刑事案件中，公義得以公平，公正，和不偏不倚地伸張。「公義」包括對犯罪者履行公義、為罪行受害者彰顯公義，以及為社會秉行公義，把罪有應得的人治罪，還無辜者清白，都與公眾切身利益攸關。最重要而必須強調的是，熱切尋求和伸張公義的精神是我們檢控人員的命脈。

在履行維護公義的職責時，公眾利益是我們最重要的依歸。檢控人員代表社會，是廣大市民的代表。為確保我們妥善履行肩負的社會責任，《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。全賴由基本法確立的檢控獨立原則，我們得以秉持不懼不偏的精神，恪守信念，鍥而不捨地追求公義。

我們身處的社會科技發展日新月異，罪犯以現代科技作為犯案工具和媒介，情況日趨嚴重。本科在 2023 年悉力以赴，作好一切準備應對數量劇增的科技罪案，致力尋求和伸張公義。2023 年 7 月，本科成立了科技罪行分科。該

2023 was a milestone year for the Prosecutions Division. With increased operational efficiency following our restructuring in 2022, a new Sub-division was established this year to foster expertise for tackling latest crime trends. The year also saw the Division's return onto the world stage, engaging overseas jurisdictions into dialogue and collaboration on pertinent criminal law issues of international concern. Reflecting on 2023 in hindsight, I am able to proudly and firmly say that the Division continued to fervently pursue justice with integrity, professionalism, and passion.

The theme of this year's review, "Upholding Justice with Integrity – Our Entrenched Duty at All Times", encapsulates the noble calling of prosecutors to serve the community and the rule of law as ministers of justice. From making prosecutorial decisions, prosecuting trials and appeals, to reviewing and formulating prosecution policies, the work of a prosecutor is inherently public-centered, directly affecting the community and those who live in it. It is therefore incumbent upon us to act fairly and in the public interest in conducting all aspects of prosecutorial work, a duty which we discharge with a strong sense of public spirit.

Our duty to act fairly dictates that the purpose of bringing prosecutions is not to secure convictions, but to secure the delivery of justice in a fair, impartial, and even-handed manner in all criminal cases. "Justice" includes justice to those having committed crimes, justice for victims of crime, and justice to the community which has a vested interest in seeing that the guilty are convicted and the innocent are acquitted. Above all, it bears emphasizing that a passion to seek and deliver justice forms the very lifeblood of us prosecutors.

In discharging our duty to uphold justice, nothing occupies a greater importance than the public interest. Prosecutors represent the community, and the community as a whole. To ensure the proper discharge of our duty to the community, Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions free from any interference. This constitutional enshrinement of prosecutorial independence allows us to pursue public justice without fear or favor, but with an abundance of faith, righteousness, and perseverance.

We live in a society characterized by incessant technological advancements, where modern technology is increasingly being exploited by criminals as an instrument and medium of crime. The Division made every effort in 2023 to ensure that it is fully

分科由專責處理科技罪行案件的檢控人員組成，他們和電腦網絡和法證專家及執法機關緊密合作。把科技罪行罪犯繩之於法是我們一直進行的工作，而該分科匯聚具備處理科技罪行知識的專才，對執行這項工作大有裨益。

然而，打擊科技罪行並非任何一個司法管轄區能獨立成事。科技罪行跨越司法管轄界限，其罪證亦可能遍佈世界各地。要成功打擊這類具跨國特性的罪案，國際間通力合作至關重要。我們除了成立專門分科外，亦通過參與一系列的研討會及會議與國際交流，包括由國際檢察官協會及財務行動特別組織主辦的會談。會議上，多個司法管轄區的檢控機關代表聚首一堂，本科的檢控官更與他們討論在現今科技時代打擊罪案等議題，成果豐碩。在可見將來，國際外展事務是我們其中一個重要的工作範疇。我們將繼續與海外司法管轄區交流知識和經驗，確保我們準備周全，能夠在持續變化的世界中維護和伸張公義。

儘管工作繁重，我們並沒有輕忽為同事加強培訓和專業發展。年內，本科為見習律政人員和新入職的檢控官舉辦了刑事訟辯課程，以及為來自政府各決策局和部門的檢控人員，舉辦了

equipped to seek and deliver justice amidst the proliferation of crimes featuring a technological dimension. In July 2023, the Division established the Technology Crime Sub-division, a dedicated team of prosecutors who specialize in handling technology crime cases, and who work closely with cyber and forensic experts and law enforcement agencies. The Sub-division, being the locus of knowledge and expertise relating to technology crimes, will be instrumental in our ongoing efforts to bring offenders of technology crimes to justice.

Yet, the fight against technology crimes cannot be fought by any one jurisdiction alone. Technology crimes know no jurisdictional boundaries, and often involve evidence scattered across the globe. The trans-national nature of such crimes means that concerted international effort is crucial in mounting a successful fight against them. On top of our efforts to establish a dedicated Sub-division, we reached out to the international community by participating in a series of conferences and meetings hosted by organizations such as the International Association of Prosecutors and the Financial Action Task Force. These conferences brought together prosecutorial agencies of various jurisdictions, with which the Division engaged in fruitful discussions on, amongst other things, combatting crime in the modern technological age. With international outreach being an integral part of our work in the foreseeable future, we will continue to engage overseas jurisdictions in knowledge and experience exchange to ensure that we are best equipped to uphold and deliver justice in an ever-changing world.



部門檢控人員培訓課程。這些密集式課程重點教授刑事訴訟程序、審訊籌備，及審訊訟辯，為參加者在法庭上進行公平妥善的檢控工作做好準備。此外，資深同事、執法機關代表，和著名嘉賓講者主持多個有關刑事法律和常規的內部研討會。數名檢控官更參加了海外培訓課程，以磨練及進一步提升訟辯技巧。我們將持續追求專業發展，而我深信本科會貫徹如一，繼續以最高水準和能力維護公義。

展望未來，香港將於 2024 年 11 月主辦國際檢察官協會第 11 屆亞太區會議，討論在科技時代如何運作有效的檢控服務，以及在刑事司法制度中應用科技等相關議題。我們期待國際同業參與這項有意義的活動。來自不同司法管轄區的檢控人員可藉此良機交流知識、探索新興趨勢和促進合作，以推進我們共同打擊罪案的工作。

熱衷追求公義是檢控精神的本質。檢控人員在妥善執行刑事司法工作中擔當不可或缺的角色。在市民和同事的大力支持下，我們會繼續緊貼變化萬千的刑事罪案趨勢，為市民提供卓越的檢控服務。各位同事一直鼎力支持，克盡厥職，謹此衷心致謝。我們會繼續同心協力，以正直之心秉行公義，以不亢不卑的態度履行固有職責，並以此為榮。

Amidst the heavy workload, we have not lost sight of the importance of enhancing training and professional development for our colleagues. Throughout 2023, the Division held the Criminal Advocacy Course for legal trainees and new recruits, and the Departmental Prosecutors Training Course for lay prosecutors from government bureaux and departments. These intensive courses, with a particular emphasis on criminal procedure, trial preparation, and trial advocacy, prepared participants for conducting fair and proper prosecutions in court. In addition, various in-house seminars on criminal law and practice were delivered by experienced colleagues, representatives of law enforcement agencies, and distinguished guest speakers. A number of prosecutors also attended overseas training courses to hone and further sharpen their advocacy skills. With our ongoing commitment to professional development, I am confident that the Division will continue to uphold justice as a prosecution service of the highest standard and caliber.

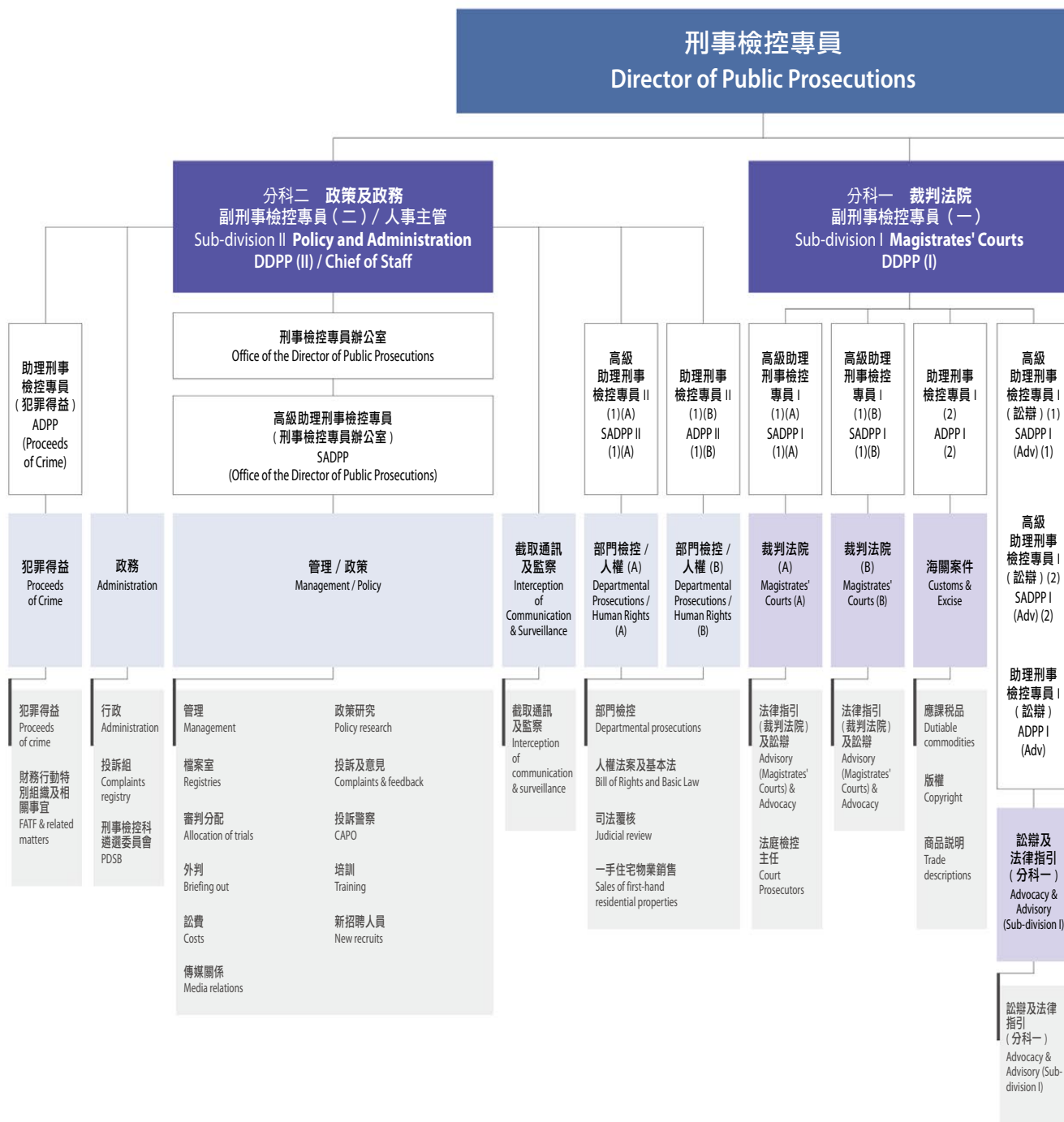
Looking ahead, Hong Kong will host the 11th Asia and Pacific Regional Conference of the International Association of Prosecutors in November 2024, to discuss pertinent topics relating to the operation of an effective prosecution service in the technological age, and the use of technology in the criminal justice system. We look forward to welcoming our international counterparts to this meaningful event, which will be a major platform for prosecutors from different jurisdictions to exchange knowledge, explore emerging trends, and foster collaborations to further our collective anti-crime agendas.

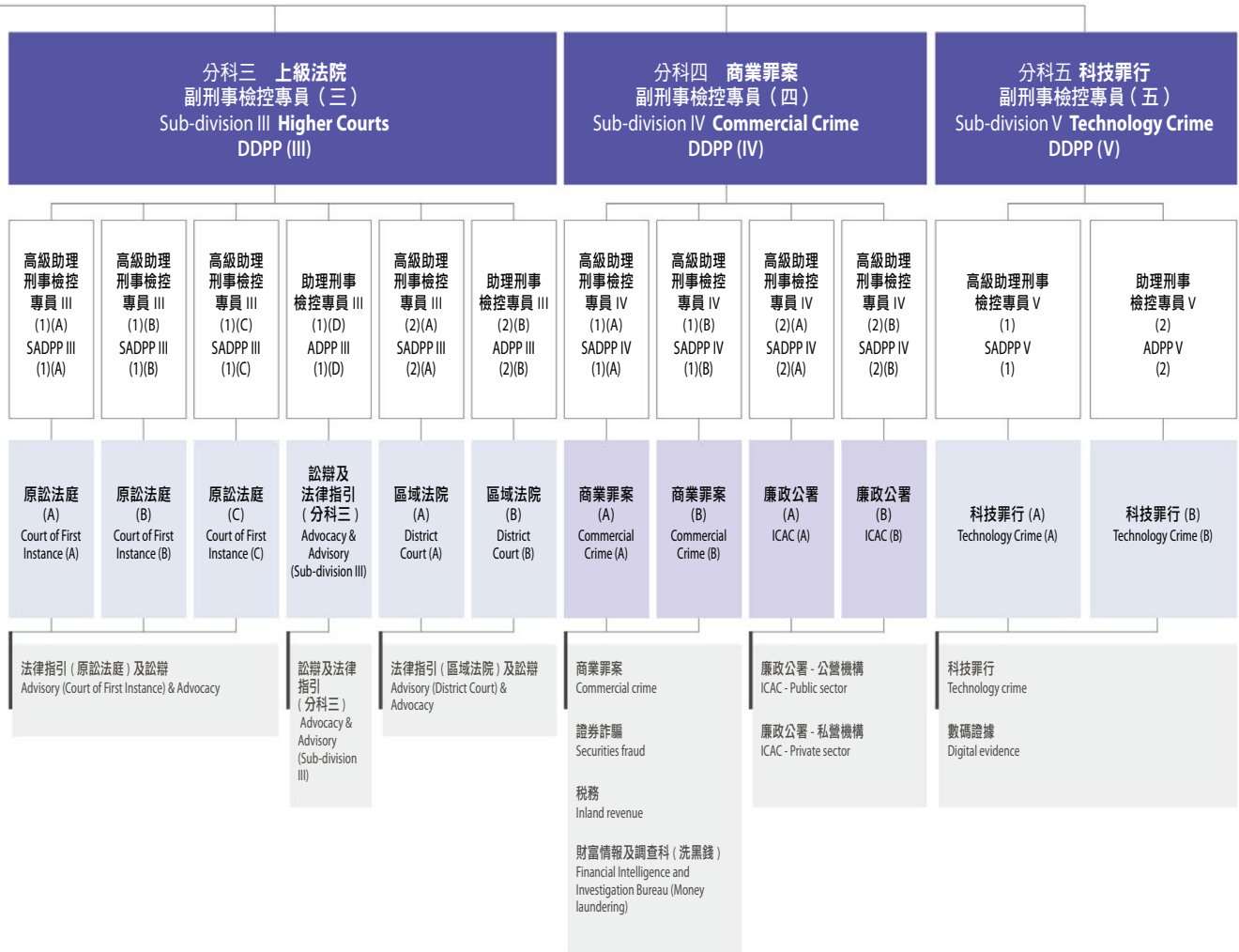
A passion for justice defines the essence of the prosecutorial spirit. Prosecutors play an indispensable role in the due administration of criminal justice. With strong support from the public and my colleagues, we will continue to serve the community as a first-class prosecution service which stays abreast of the ever-changing criminal landscape. It only remains for me to wholeheartedly thank all of our colleagues for their continued support and dedication. Together, let us make every effort to continue delivering justice with integrity – our entrenched duty which we will always discharge with humility, dignity, and honor.

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

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）負責確保裁判法院檢控刑事案件的工作有力且有效率地進行。香港有七所裁判法院，就各類罪行和針對兒童及少年人的起訴進行聆訊。本分科的律師負責為這些罪行及控罪並將在裁判法院審訊的案件是否有足夠證據和控罪是否合適，向各執法機關提供法律指引。除提供法律指引外，本分科的律師亦負責代表檢控方在裁判法院處理性質敏感和牽涉複雜法律問題的審訊，以及處理隨後的覆核和上訴。

裁判法院聆訊的案件主要源於警方就影響市民日常生活的罪行所作的調查，所涉罪行範圍廣泛，當中包括盜竊、詐騙、洗黑錢、危險藥物、襲擊、性罪行、涉及兒童色情物品的罪行、非法賭博、刑事毀壞、刑事恐嚇和三合會相關罪行等傳統罪行，窺淫和起底等近年才刑事化的罪行，以及公共秩序事件引起的罪行和道路交通罪行等等。此外，由香港海關執法的案件也在裁判法院審理。這些案件涉及多項由不同法例規管的罪行，當中包括反走私、保護版權及商標、保障政府收入、保障消費者權益和不良營商手法有關的罪行。

隨着過去數年 2019 冠狀病毒病疫情對香港法院的干擾逐漸減少，法庭聆訊已在 2023 年全面復常。裁判法院在 2023 年共處理了 143,824 宗由不同執法機構調查並由本分科提出檢控的刑事案件，當中很多有尋求法律指引的個案都是由本分科的高級檢控官及檢控官處理。本分科在 2023 年繼續就上述事宜提供法律指引，數量高達 4,925 項，與去年的數量相若。本分科的律師竭誠盡責，仔細評估每宗案件可採納的證據，再根據《檢控守則》擬定合適的控罪，秉持最高的專業及公正水平。

除就影響市民日常生活的罪行提供法律意見及提出檢控外，本分科亦負責處理與維護國家象徵及加強民族自豪感的法律有關的案件。在香港特別行政區訴鄭榮進 ESCC 1366/2022 一案中，被告在一段香港特別行政區在 2020 年奧運會花劍項目取得史上首面奧運金牌的頒獎典禮錄像中，故意以某首示威歌曲代替中華人民共和國國歌。該段被篡改的錄像由被告在網上發布，並在互聯網上廣為流傳，觀看者眾。中華人民共和國國歌是團結和自豪的象徵；被告

Sub-division I (Magistrates' Courts) has the responsibility for the effective and efficient prosecution of criminal cases in the Magistrates' Courts. There are seven Magistrates' Courts in Hong Kong, hearing a wide range of offences as well as charges against children and young persons. Counsel of this Sub-division are thus tasked to provide legal advice on the sufficiency of evidence and appropriateness of charge in cases concerning these offences and charges which are to be tried in the Magistrates' Courts to various law enforcement agencies. Beyond such advisory role, they also assume the responsibility for prosecuting trials with sensitive issues and legal complications in the Magistrates' Courts, as well as handling subsequent reviews and appeals.

The cases heard in the Magistrates' Courts predominantly stem from investigations conducted by the Police, addressing crimes that would impact the everyday life of citizens. The offences tried in the Magistrates' Courts cover a broad scope, including conventional crimes such as theft, fraud, money laundering, dangerous drugs, assaults, sexual offences, child pornography, illegal gambling, criminal damage, criminal intimidation and triad-related offences, and recently criminalized offences such as voyeurism and doxxing, offences arising from public order events, as well as road traffic offences. In addition, cases related to the offences enforced by the Customs and Excise Department are also conducted in the Magistrates' Courts. These cases encompass an extensive range of offences under various legislations, including offences pertaining to anti-smuggling, copyright and trademark protection, revenue protection, consumer rights protection and unfair trade practices.

Following the gradual subsidence of the disruptions brought upon by the COVID-19 pandemic to the Courts in Hong Kong in previous years, court hearings fully resumed in 2023. In 2023, the Magistrates' Courts handled a total of 143,824 criminal cases that were investigated by various law enforcement agencies and prosecuted by this Sub-division. Among these cases, a significant number sought legal advice, which were primarily provided by our Senior Public Prosecutors and Public Prosecutors of this Sub-division. The number of legal advice rendered in 2023 remained consistently high at 4,925, a figure similar to the preceding year. Our Counsel conscientiously upheld their duty by meticulously evaluating the available evidence and advising on the appropriate charge in accordance with the Prosecution Code in every case and maintained the highest standards of professionalism and impartiality.

Other than advising and prosecuting crimes that impact the everyday life of our citizens, this Sub-division handles cases relating to the law upholding national symbols and fostering

以示威歌曲取而代之的行為，損害了與此等重要國家象徵相關的意義和情感。被告因此被控一項“侮辱國歌”罪，以及一項“侮辱區旗”的交替控罪。經詳細審訊後，被告被裁定“侮辱國歌”罪名成立，判監三個月，是《國歌條例》（參考編號：文件 A405）自 2022 年 6 月 12 日實施以來，香港特別行政區首宗因該罪行被定罪的案件。有關定罪向公眾明確顯示，貶損及蔑視國家象徵的行為不可縱容。

香港特別行政區 訴 翁政文 KCCC 2927/2022 一案是另一宗維護國家榮譽的成功檢控個案。2022 年國慶日慶祝活動舉行期間，多個公眾場所豎起展示國旗及區旗的旗桿。國慶日翌日，被告使勁抓住繫於旗桿上的國旗一角，使整根旗桿歪倒。此外，他又扯下一枝掛有區旗的旗桿，並把桿上的旗幟棄於路旁。被告被控一項“侮辱國旗”罪，以及一項“侮辱區旗”罪。被告就兩項控罪均被裁定罪名成立，並被判處監禁 18 天。

本分科亦負責處理需要對先進技術有一定程度認識的複雜案件。在香港特別行政區 訴 薛俊希 KTCC 2051/2022 案中，事發當日電視廣播有限公司（無綫電視）營運的流動應用程式的推播通知（push notification）系統出現異常，容許非無綫電視員工的網絡使用者進入該系統並且註冊帳戶，繼而在該流動應用程式中建立和發布推播通知。被告乘此機會在該流動應用程式建立帳戶，並透過推播通知系統散播虛假消息，意圖誤導公眾，結果令看到相關信息的人士感到困惑。被告因此被控“刑事損壞”罪，經審訊後被裁定罪名成立，判處 200 小時社會服務令。

此外，本分科與其他分科一樣，首要照顧社會上弱勢受害人的福祉。本分科着力確保裁判法院案件無論在聆訊、覆核階段及上訴時，公義都獲得充分彰顯，從而維護公眾利益。本分科根據《裁判官條例》（第 227 章）第 104 條就裁判官的決定提出覆核的一些成功的案件如下：

在香港特別行政區 訴 楊青霞 FLCC 1585/2022 一案中，在安老院任職護理員的被告被裁定三項對院內三名殘疾人士施行“普通襲擊”的罪

national pride. In *HKSAR v Cheng Wing-chun* ESCC 1366/2022, the defendant deliberately replaced the national anthem of the People's Republic of China with a protest song in a video capturing the medal ceremony of HKSAR's first-ever Olympic gold in fencing at the 2020 Olympic Games. This altered video was published by the defendant online and circulated on the internet widely, reaching a broad audience. By replacing the national anthem of the People's Republic of China, a symbol of unity and pride, with a protest song, the defendant undermined the values and sentiments associated with this important national symbol. Consequentially, the defendant was charged with a count of "insulting the national anthem" and an alternative count of "desecrating the regional flag". After a thorough trial, the defendant was found guilty of "insulting the national anthem", and was sentenced to three months' imprisonment. This conviction is HKSAR's first conviction for the offence since the implementation of the National Anthem Ordinance (Instrument A405) on 12 June 2022, sending a clear message to the public that disrespecting and defying national symbols will not be tolerated.

Another successful prosecution that upholds the honor of the Nation can be seen in the case of *HKSAR v Yung Ching-man* KCCC 2927/2022. During the National Day celebrations in 2022, flagpoles displaying both the national flag and regional flag were erected in various public places. However, on the day following the National Day, the defendant forcefully grabbed the corner of the national flag attached to a flagpole, causing the entire structure to bend and fall. Additionally, he pulled down a flagpole carrying a regional flag and discarded the flag by the roadside. The defendant was charged with one count of "desecrating the national flag" and one count of "desecrating the regional flag" and was found guilty on both counts. As a result, he was sentenced to 18 days' imprisonment.

This Sub-division also handles intricate cases that require a certain level of understanding of advanced technologies. In *HKSAR v Shik Chun-hay* KTCC 2051/2022, there was an anomaly concerning the push notification system of a mobile application operated by Television Broadcasts Limited (TVB) on the day of the incident. This anomaly allowed internet users (other than the staff of TVB) to gain access to the system and enabled them to register an account and then create and publish push notifications within the mobile application. The defendant, taking advantage of this anomaly, created an account in the mobile application, and disseminated messages of false news through the push notification system with the intention of misleading the public. As a result, those who saw the messages were led into a state of confusion. The defendant was therefore charged with the offence of "criminal damage" and, following a trial, was convicted and sentenced to a community service order of 200 hours.



名成立。法院最初判處被告 120 小時社會服務令。然而，在本分科提出覆核後，裁判官最終同意適當的量刑起點應為 12 星期的監禁。

在香港特別行政區 訴 魏子恩 STCC 877/2022 一案中，一名夜班保安員把其流動電話（連同一個電話套）遺留在保安亭內，無人看管。被告暗中窺探，乘該名保安員不為意，進入涉案大廈偷取該流動電話和電話套。被告承認一項“盜竊”罪，被判緩刑三星期。在本分科提出覆核後，裁判官接納控方的覆核申請，改判被告緩刑七個月。

涉及香港特別行政區 訴 高小華 STCC 3183/2023 一案的罪行發生在受害人和被告用膳的一間餐廳內。受害人午膳後離開餐廳，卻不慎把流動電話遺留在餐桌上。當他返回餐廳時，其電話已不翼而飛，原來已遭被告偷去。被告承認一項“盜竊”罪，但僅被判罰款港幣 3,000 元。經覆核後，除了維持上述港幣 3,000 元的罰款外，裁判官加判被告監禁兩個月，緩刑 18 個月。

有時候，公義未能在下級法院獲得彰顯。此時，本分科會訴諸上級法院。律政司司長 訴 何健威及另三人 [2023] HKCA 84 是一宗涉及賽車的案件。四名被告在承認干犯賽車、

In addition, this Sub-division, like other Sub-divisions, is dedicated to prioritizing the well-being of vulnerable victims in the community. This Sub-division places great importance on ensuring that justice is effectively pursued at trial hearings, review stages, as well as appeals of the Magistrates' Courts cases, thereby safeguarding the public interest. Some of our successful reviews under section 104 of the Magistrates Ordinance (Cap. 227) are as follows.

In *HKSAR v Yeung Ching-ha* FLCC 1585/2022, the defendant, who worked as a caregiver at a residential care home, was found guilty of three counts of “common assault” against three individuals with disabilities residing in the care home. Initially, the Court imposed a community service order of 120 hours against the defendant. However, following a review initiated by this Sub-division, the magistrate ultimately agreed that an appropriate starting point should be 12 weeks' imprisonment.

In *HKSAR v Ngai Tsz-yan* STCC 877/2022, the defendant spied on a night-time security guard who left her mobile phone together with a phone case unattended at a security post. When the guard was not paying attention, the defendant entered the building concerned and stole her mobile phone and phone case. After the defendant pleaded guilty to one count of “theft”, he was sentenced to a suspended sentence of three weeks. Upon allowing our application for review, the magistrate re-sentenced the defendant to a suspended sentence of seven months.

In *HKSAR v Ko Siu-wah* STCC 3183/2023, the offence took place in a restaurant where the victim and the defendant had lunch. After lunch, the victim inadvertently left his mobile phone on the table and left the restaurant. When the victim later returned to the restaurant, his phone was already gone. It turned out that the defendant had stolen his phone. The defendant who pleaded guilty to one count of “theft” was fined HK\$3,000 only. Upon review, the magistrate re-sentenced the defendant to two months' imprisonment suspended for 18 months in addition to a HK\$3,000 fine.

Sometimes, when justice could not be achieved at the lower Courts, this Sub-division would bring the matter to a higher Court. In *Secretary for Justice v Ho Ken-wai Alex and 3 others* [2023] HKCA 84, a motor racing case, four defendants who were convicted upon their own pleas of guilty to motor racing, dangerous driving and other traffic offences, were sentenced to community service orders. After an unsuccessful review application to have the sentences enhanced at the Magistrates' Courts, this Sub-division proceeded to apply to the Court of Appeal for a review under section 81A of the Criminal Procedure Ordinance (Cap. 221). Upon allowing the review, the Court of Appeal reiterated that a

危險駕駛和其他交通罪行後被判處社會服務令。本分科於裁判法院申請覆核以加重刑罰不果，繼而根據《刑事訴訟程序條例》(第221章)第81A條向上訴法庭申請覆核。上訴法庭裁定覆核得直，重申道路賽車罪行的首選刑罰應為即時監禁，並下令把全部四名被告的社會服務令改判為監禁兩個月。

在香港特別行政區 訴 中國路橋工程有限責任公司及另兩人 [2023] HKCFI 3070 一案中，六名工人被發現配戴安全頭盔時沒有使用帽帶。第一及第二被告是總承建商，而第三被告則是次承建商。三名被告共獲發三張傳票，指他們“身為負責的承建商，沒有採取所有合理步驟，以確保工人如無配戴適當的安全頭盔，則不得逗留在建築地盤內”，違反《建築地盤(安全)規例》(第591章)。三名被告經審訊後獲裁定罪名不成立。本分科根據《裁判官條例》(第227章)第104條所提出的覆核無罪裁決申請遭到駁回。本分科便依據《裁判官條例》(第227章)第105條以案件呈述方式提出上訴。原訟法庭判處上訴得直，並指出裁判官錯誤裁定涉案承建商無需確保工人在配戴安全頭盔時繫緊帽帶。

本分科的律師亦負責處理由香港海關執法的案件。雖然這類案件大多數由裁判法院審理，但性質較嚴重的會交予區域法院審理。下文載述一些由本分科在2023年內處理並值得留意的案件。

在香港特別行政區 訴 黃培勳 [2023] HKDC 438 一案中，一名跨境貨車司機把多種電子產品、燕窩及象牙等大量未列艙單貨物走私離港，被海關人員拘捕。檢獲的象牙證實為受《保護瀕危動植物物種條例》(第586章)管制的瀕危物種，而案中檢獲的物品估計總值約港幣2,000萬元。涉案貨車司機承認干犯一項“企圖輸出未列艙單貨物”罪及另一項“企圖出口附錄I瀕危物種”罪，被裁定兩項罪名成立，並被判處監禁合共兩年。

在香港特別行政區 訴 周柏賢 ESCC 502/2023 一案中，被告向兩名男受害人收取合共港幣110,000元的費用以提供約會技巧培訓服務，又要求兩人各額外支付港幣100,000元至

sentence of immediate custody was the first choice for road racing offences and ordered that the community service order imposed on each of the four defendants be replaced with two months' imprisonment.

In *HKSAR v China Road and Bridge Corporation and 2 others* [2023] HKCFI 3070, six workmen were found wearing safety helmets without using chin-straps. The first and second defendants were the principal contractors whereas the third defendant was the sub-contractor. The three defendants were acquitted, after trial, of three summonses of "being contractor responsible, failing to take all reasonable steps to ensure that no workmen remained on the site unless they were wearing suitable safety helmets" contrary to the Construction Sites (Safety) Regulations (Cap. 591). Unfortunately, the application for review of the acquittals under section 104 of the Magistrates Ordinance (Cap. 227) was dismissed. Thereafter, this Sub-division proceeded to appeal by way of case stated under section 105 of the Magistrates Ordinance (Cap. 227). Upon allowing the appeal, the Court of First Instance held, inter alia, that the magistrate had erred in finding that the contractors concerned did not need to ensure that the workmen were wearing safety helmets with the chin-straps securely fastened.

Counsel of this Sub-division are also responsible for handling cases concerning offences enforced by the Customs and Excise Department. While the majority of these cases are dealt with in the Magistrates' Courts, cases of more serious nature would be brought up to the District Court. Below are some noteworthy cases handled by this Sub-division in 2023.

In *HKSAR v Wong Pui-fun* [2023] HKDC 438, Customs officers arrested a cross-border lorry driver who was involved in smuggling out of Hong Kong a large quantity of unmanifested cargoes, including assorted electronic products, bird nest and ivory. The ivory seized was confirmed to be endangered species controlled under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). The value of the total seizures of the case was estimated to be around HK\$20 million. The lorry driver was convicted on his own plea of guilty of the offence of "attempting to export unmanifested cargo" and an additional offence of "attempting to export Appendix I endangered species". He was ordered to serve an overall sentence of two years' imprisonment.

In *HKSAR v Chau Pak-yin* ESCC 502/2023, the defendant provided training services on dating technique to two male victims after receiving from them fees in a total sum of HK\$110,000. He later demanded each of the two victims to pay an additional sum, ranging from HK\$100,000 to HK\$330,000, as image transformation service fees. He refused to provide the training services to the victims after they failed to pay the additional service fees. He was

330,000 元不等，作為形象改造服務費。其後，被告以兩名受害人沒有支付額外服務費為由，拒絕向他們提供培訓服務。被告因“作出屬誤導性遺漏的營業行為”一罪，違反《商品說明條例》(第 362 章)，而在審訊後被裁定罪名成立，被判處 160 小時社會服務令。

在香港特別行政區 訴 林鳳恩及另一人 KTCC 1151/2023 的案件中，一間網上電器零售商透過社交媒體平台向多名顧客出售 57 部冷氣機，收取合共港幣 197,500 元的訂金。該零售商明知自己有財政困難以致無法採購和供應該等冷氣機，但仍然接受顧客付款，最終未能向顧客提供貨品。該零售商的東主和職員因“不當地接受付款”一罪，違反《商品說明條例》(第 362 章)，同被裁定罪名成立，各被判處監禁 31 星期。

在香港特別行政區 訴 傲輝集團有限公司 KTS 11506-7/2021 及香港特別行政區 訴 黎紹津及另一人 KTCC 963/2021 的案件中，外科口罩供應商及其董事和經理因“供應已應用虛假商品說明的貨品”的罪行，違反《商品說明條例》(第 362 章)，經審訊後被裁定罪名成立。涉案貨品是供應給政府物流服務署的外科口罩，被發現載有關乎其製造商及符合相關過濾效率標準的虛假商品說明。有關供應商被判罰款港幣 80,000 元，其董事及經理則分別被判處監禁六個半月及 11 個月。與案件相關的上游供應商及其董事也在早前另一宗案件中被定罪，前者被判罰款港幣 80,000 元，後者則被判處監禁九個月，而涉案約 590 萬個外科口罩也被充公。在近年涉及貨品的不良營商手法案件中，此案判處的監禁刑罰最為嚴厲。

convicted after trial for “engaging in commercial practice involving misleading omission”, in contravention of the Trade Descriptions Ordinance (Cap. 362), and was sentenced to a community service order of 160 hours.

In *HKSAR v Lam Fung-yan and another* KTCC 1151/2023, an online electrical appliances retailer offered to sell to multiple customers through social media platform 57 sets of air conditioner after receiving deposits amounting to HK\$197,500 in total. Being well aware of its inability to procure and supply the air conditioners due to its own financial difficulties, the retailer still accepted payments from the customers, and eventually failed to provide the products to those customers. The owner and the staff member of the retailer were both convicted of the offences of “wrongly accepting payment”, in contravention of the Trade Descriptions Ordinance (Cap. 362), and were each sentenced to 31 weeks’ imprisonment.

In *HKSAR v O & F Group Ltd* KTS 11506-7/2021 and *HKSAR v Lai Siu-chun and another* KTCC 963/2021, the surgical masks supplier and its director and manager were convicted after trial of the offences of “supplying goods to which false trade descriptions were applied”, in contravention of the Trade Descriptions Ordinance (Cap. 362). The surgical masks which had been supplied to the Government Logistics Department were found to bear false trade descriptions about their manufacturer and their compliance with the relevant filtration efficiency standard. While the supplier was fined HK\$80,000, its director and manager were sentenced to six and a half months’ imprisonment and 11 months’ imprisonment respectively. The upstream supplier and its director were also convicted in another earlier case. The upstream supplier was fined HK\$80,000, and its director was sentenced to nine months’ imprisonment. About 5.9 million surgical masks involved in the case were also confiscated. The custodial sentence imposed in this case was the heaviest among the unfair trade practice cases involving goods in the recent years.



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（“專員辦公室”）、犯罪得益組、兩個部門檢控／人權組、行政和不同支援組別組成，負責各式各樣的案件和檢控事務。

2023年，本分科繼續堅定不移，正直不阿地秉行公義。2019冠狀病毒病疫情縱已緩和，分科內律師依然努力不懈，就為抗疫而訂立的罪行在刑事法庭代表檢控方處理審訊和上訴。本分科亦一如既往，為涉及犯罪得益、各類部門傳票和一般罪行的審訊和上訴提供法律指引並出庭檢控，悉力應付當中的新挑戰。

本分科各組別負責的工作重點如下：

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，職責範圍廣泛多元，涵蓋行政和管理事宜，以及科內的政策發展工作。專員辦公室律師的工作分五大範疇，包括管理、政策研究、培訓、傳媒關係和投訴及意見。專員辦公室亦督導科內各組法律支援人員，包括法律翻譯主任和律政書記。這些人員提供的法律支援服務是科內律師得以專業高效地履行職務不可或缺的元素。

管理

專員辦公室的主要職責之一是審視和評估法庭案件，繼而分派給合適的科內檢控人員或外判律師，以及將尋求法律指引的個案轉交具備最合適專門知識的檢控人員處理。專員辦公室在監督分工時須保持謹慎敏銳，確保案件以快捷專業的方式妥善處理。專員辦公室調派律師時，亦致力發揮資源效益，並讓有關律師累積經驗及照顧其培訓需要。

2023年，商業罪案、詐騙和性罪行等複雜敏感案件的數目仍然高企。專員辦公室格外審慎，指派富經驗且合適的律師處理此類案件，以確保刑事檢控科不負所望，保持卓越的服務水平。

Sub-division II, being responsible for a diverse portfolio of cases and prosecution affairs, comprises the Office of the Director of Public Prosecutions (“the ODPP”), the Proceeds of Crime Section, the two Departmental Prosecutions / Human Rights Sections, and the Administration and Support Units.

In 2023, our commitment to upholding justice with integrity remained unwavering. While the COVID-19 pandemic had subsided, counsel of the Sub-division persevered in prosecuting trials and appeals in the criminal Courts relating to offences aimed at combatting the pandemic. The Sub-division also continued to dedicate significant efforts to address new challenges in advising on and prosecuting trials and appeals involving proceeds of crime, a diverse range of departmental summonses, and offences of a general kind.

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 ODPP is dedicated to facilitating the effective day-to-day operation of the Prosecutions Division. Its responsibilities are extensive and multifarious covering administrative and management matters as well as policy development of the Division. Counsel of the ODPP work across five major areas of work, including management, policy research, training, media relations, and complaints and feedback. The ODPP also supervises the Division’s legal support teams, comprising Law Translation Officers and Law Clerks. Their legal support service is indispensable to the professional and efficient discharge of the duties of all counsel within the Division.

Management

One of the primary duties of the ODPP is to scrutinise, assess and assign Court cases to suitable in-house prosecutors or counsel on fiat, and to refer requests for legal advice to prosecutors having the most appropriate expertise in dealing with them. The ODPP has to monitor and supervise the assignment of duties carefully and sensitively to ensure that cases are handled properly, efficiently and professionally. It also makes deployment of counsel to maximise resource effectiveness and, at the same time, to benefit counsel in terms of exposure and training needs.

In 2023, the number of complex and sensitive cases, such as commercial crime, deception and sexual offences, remained

政策

專員辦公室就廣泛事宜，包括擬訂新法例和修訂現行法例時所衍生的檢控政策相關事宜，定期向政府決策局及部門提供法律指引。專員辦公室在 2023 年就多項重要的擬議法例提供法律指引，其中包括：

- (1) 《2023 年野生動物保護（修訂）條例草案》：該草案旨在把禁止餵飼野生動物的範圍擴展至涵蓋野鴿、提高最高罰則，以及就非法餵飼野生動物引入定額罰款機制；
- (2) 《2023 年區旗及區徽（修訂）條例草案》；
- (3) 《海上安全（酒精及藥物）條例草案》；
- (4) 《2023 年道路交通法例（提升個人化點對點交通服務）（修訂）條例草案》；
- (5) 《2023 年建築物管理（修訂）條例草案》；
- (6) 修訂《公眾衛生及市政條例》（第 132 章）及其他相關條例的立法建議，以處理店鋪阻街等問題；以及
- (7) 《強制舉報虐待兒童條例草案》。

培訓

訟辯是刑事檢控科的核心工作。本科致力培訓檢控人員，使他們具備所需技巧，以最佳專業水平執行檢控工作。有關培訓由培訓組負責。

疫情過後，培訓活動於 2023 年全面恢復。半年一度的刑事訟辯課程、每年一度的部門檢控人員培訓課程，以及一系列為科內律師、執法機關人員和其他政府部門人員而設的培訓活動均圓滿舉行。隨着部門檢控案件的數量和複雜程度與日俱增，部門檢控人員和調查人員的培訓需求也不斷上升。2023 年 5 月，培訓組聯同部門檢控／人權組的成員舉辦了一場研討會（屬部門檢控人員培訓課程的一環），主題為“招認（傳聞證據、供認、規則和指示、案中

high. The ODPP exercised particular consideration in engaging experienced and suitable counsel to handle such cases so as to ensure and maintain the high level of competency expected of the Division.

Policy

The ODPP regularly gives legal advice to Government bureaux and departments on wide-ranging issues, including issues relating to prosecution policy arising from proposed new legislation and amendments to existing legislation. Notable proposed legislation which the ODPP had advised upon in 2023 included:

- (1) Wild Animals Protection (Amendment) Bill 2023 which aimed to expand the scope of the feeding ban to cover feral pigeons, increase the maximum penalty, and introduce a fixed penalty system for illegal feeding of wild animals;
- (2) Regional Flag and Regional Emblem (Amendment) Bill 2023;
- (3) Marine Safety (Alcohol and Drugs) Bill;
- (4) Road Traffic Legislation (Enhancing Personalized Point-to-point Transport Services) (Amendment) Bill 2023;
- (5) Building Management (Amendment) Bill 2023;
- (6) Legislative proposal to amend the Public Health and Municipal Services Ordinance (Cap. 132) and other related ordinances to tackle problems such as shopfront extension; and
- (7) Mandatory Reporting of Child Abuse Bill.

Training

Advocacy is the core business of the Prosecutions Division. The Division aims to equip prosecutors with the necessary skills to conduct prosecutions to the highest professional standard and the Training Unit is responsible for it.

Training returned to full force in 2023 after the pandemic. The bi-annual Criminal Advocacy Course, the annual Departmental Prosecutors Training Course (“DPTC”) and a series of training for in-house counsel, officers of law enforcement agencies and other Government departments were organised with success. As the caseload and complexity of departmental prosecution cases increased, the demand for training both departmental prosecutors and departmental investigators was on the rise. In May 2023, the Training Unit and members of the Departmental Prosecutions /

案程序、交替程序及部門案件中有關警誡供詞的常見問題)”，共有 657 名來自 27 個不同政府部門的人員出席。該研討會以網上研討會形式舉行，並首次擴展至 500 多個收看地點，以便各政府部門的調查人員參與。

傳媒

律政司明白傳媒在讓公眾了解刑事司法制度的運作方面擔當重要角色。2023 年，專員辦公室繼續依據《檢控守則》協助傳媒取得準確和最新的刑事案件資訊，包括已在公開聆訊中披露的事宜、與案件有關事宜的預期進度和其他相關公開資訊。此舉不但可讓公眾充分了解法律程序的進展，也可提高刑事司法制度的透明度和問責性。專員辦公室致力與傳媒建立負責任和良好互動的關係，在維持司法制度公開公正以符合公眾利益和保障所涉各方的私隱權之間取得平衡。

投訴及意見

專員辦公室負責處理和答覆公眾及非政府機構對刑事檢控科的投訴和查詢。專員辦公室按個別個案的情況公平公正地就所有投訴進行調查，並確保採取適當行動跟進每宗個案，包括獨立覆核不檢控個別案件的決定、評估覆核刑罰或上訴的勝訴機會、檢討法律程序中的檢控工作，以及在適當情況下向相關組別提出建議。

2023 年，專員辦公室共處理 485 宗有關刑事檢控科工作的投訴和查詢。

犯罪得益組

限制和沒收犯罪得益有助打破犯罪循環、防止進一步罪行發生，以及剝奪用作資助犯罪的收益。2023 年，執法機關大力打擊跨境金融罪行，而打擊這些罪行往往需要進行仔細入微的調查及分析資金流向。犯罪得益組則致力執行香港在追討資產及打擊洗黑錢方面的法例。2023 年內，犯罪得益組成功取得合共 32 項限制令和 20 項沒收令。被限制的可變現財產達港幣 291,138,920 元，被法院頒令沒收的犯罪得益總額則為港幣 87,473,389.45 元。

Human Rights Sections jointly organised a seminar (as part of our DPTC) on the topic of “Admissions (hearsay, confession, rules and directions, *voir dire*, alternative procedure and common issues concerning cautioned statements in departmental cases)”, which was attended by 657 officers from 27 different departments of the Government. The seminar was extended for the first time to over 500 viewing locations by way of webinar to accommodate investigators of various Government departments.

Media

The Department recognises the important role of the media in informing the public of the operation of the criminal justice system. Throughout 2023, the ODPP continued to assist the media in obtaining accurate and updated information about criminal cases in accordance with the Prosecution Code. Such information included matters already presented in open Court, the anticipated progress of events, and other pertinent public information. By doing so, we aimed to not only keep the public well-informed about the development of legal proceedings but also promote transparency and accountability of the criminal justice system. The ODPP strives to foster a responsible and dynamic relationship with the media by balancing the public interest in maintaining open justice and the right to privacy of the parties involved.

Complaints and Feedback

The ODPP is responsible for handling complaints and answering enquiries from the general public and non-Government bodies concerning the Division. Adopting a case-sensitive approach, the ODPP investigated all complaints in a fair and impartial manner and ensured appropriate follow-up actions would be taken in each individual case. Actions taken by the ODPP included conducting independent review of the decision not to prosecute in a particular case, assessing merits of review of sentence or appeals, reviewing the prosecution conduct in proceedings, and making recommendation to the relevant Sections as appropriate.

In 2023, the ODPP handled a total of 485 cases of complaints and enquiries about the work of the Prosecutions Division.

Proceeds of Crime Section

Restraint and confiscation of proceeds of crime help in disrupting the cycle of crimes, preventing further offences, and taking out the profits that fund crimes. In 2023, significant efforts were made by law enforcement agencies to combat cross-border financial crimes, which typically require meticulous investigation as well as fund flow analysis. In turn, the Proceeds of Crime Section

在律政司司長訴 *Tam Kit-i* (2023) 26 HKCFAR 63 案中，終審法院就《有組織及嚴重罪行條例》(第 455 章) 的正確詮釋提出重要的見解。居於澳門的答辯人經由在香港持有的銀行帳戶，把資金轉至澳門前運輸工務司司長歐文龍名下的若干帳戶。歐文龍在澳門被裁定多項“貪污”及“洗黑錢”罪成。在歐文龍被捕後，答辯人的銀行帳戶仍有港幣 2,240 萬元結餘。2011 年，法庭就“洗黑錢”罪發出逮捕答辯人的手令，而當局也取得凍結該帳戶的限制令。答辯人在關鍵時間大都身處香港以外。

2016 年，原訟法庭以未能依據第 455 章第 8(1)(a)(ii)(B) 條證明答辯人已潛逃為理由，駁回律政司司長尋求沒收令的申請，但裁定限制令仍然生效。

2019 年，答辯人申請撤銷該限制令，辯稱該限制令已在律政司司長尋求沒收令的申請被拒時自動撤銷。原訟法庭駁回此論點，但上訴法庭則予以接納並裁定不論基於何等理由，法庭拒絕批予沒收令足以結束該項申請，並且觸發撤銷限制令的情況。



strived for the enforcement of asset recovery and anti-money laundering laws in Hong Kong. In 2023, a total of 32 restraint orders and 20 confiscation orders were successfully obtained. HK\$291,138,920 worth of realisable property was restrained, and the total amount of crime proceeds ordered to be confiscated was HK\$87,473,389.45.

In *Secretary for Justice v Tam Kit-i* (2023) 26 HKCFAR 63, the Court of Final Appeal provided significant insight into the proper construction of the Organized and Serious Crimes Ordinance (Cap. 455). The respondent, who resided in Macau, held a bank account in Hong Kong, through which funds were transferred to certain accounts of Ao Man-long, the former Secretary for Transport and Public Works in Macau, who was convicted of multiple counts of “corruption” and “money laundering” offences in Macau. After the arrest of Ao Man-long, a balance of HK\$22.4 million remained in the respondent’s bank account. In 2011, a warrant for the respondent’s arrest was issued for “money laundering”, and a restraint order was obtained to freeze that account. The respondent mostly remained outside Hong Kong at the material time.

In 2016, the Court of First Instance dismissed the Secretary for Justice’s application for a confiscation order on the basis that the respondent had not been shown to have absconded pursuant to section 8(1)(a)(ii)(B) of Cap. 455, but held that the restraint order remained in force.

In 2019, the respondent applied to discharge the restraint order, contending that the restraint order was automatically discharged when the Secretary for Justice’s application for the confiscation order was refused. This argument was rejected by the Court of First Instance, but was accepted by the Court of Appeal, holding that the refusal to make the confiscation order was sufficient to conclude the application and trigger the discharge of the restraint order, irrespective of the reasons behind the refusal.

The Court of Final Appeal set aside the Court of Appeal’s order to discharge the restraint order. The Court held that the refusal to grant the confiscation order did not result in an automatic discharge of the restraint order, and that the restraint order would be discharged only if the purpose of the restraint order was spent, for example, where there was no longer any extant or prospective confiscation order and thus no point in continuing to freeze the assets. The Court of First Instance’s refusal of the confiscation order did not involve any decision on the merits of the application and hence did not result in the application for the confiscation order being concluded. Further, the Court held that the essence of “abscond” under Cap. 455 involved the evasion of apprehension to face criminal proceedings for the offence concerned. There

終審法院推翻上訴法庭撤銷該限制令的命令。終審法院裁定，法庭拒絕頒下沒收令不會導致該限制令自動撤銷，而且只有在限制令的目的經已喪失（例如已無任何現存或即將發出的沒收令，因而沒有必要繼續凍結資產）的情況下，限制令方會被撤銷。由於原訟法庭拒絕批予沒收令時，並沒有作出涉及該申請理據的裁定，所以不會導致尋求沒收令的申請結束。此外，終審法院裁定第 455 章所述“潛逃”的意義涉及就有關罪行逃避拘捕和刑事法律程序。該條例沒有規定該人作出潛逃行為之前必須已被拘捕或起訴，或法律程序必須已獲展開。在本案中，答辯人深知自己如留在香港便會被捕，因此潛逃以逃避拘捕。

下文概述本組處理的其他重要案件。

在香港特別行政區 訴 吳蔚珊 [2023] HKDC 1275 案中，曾任社會福利署臨床心理學家的被告作出虛假陳述，聲稱其物業屬自住，又稱自己受僱於貿易公司和諮詢服務公司，藉此欺騙多家銀行向她提供約港幣 258 萬元按揭貸款及合共約港幣 219 萬元私人貸款。事實上，被告已出租其物業，亦沒有受僱於上述分別由她及其母親持有的貿易公司和諮詢服務公司。被告被裁定三項“欺詐”罪罪成，被判監 30 個月。應控方根據第 455 章第 8 條提出的申請，區域法院沒收被告超過港幣 238,000 元的犯罪得益，相當於她的物業在她以欺詐手段取得按揭貸款後升值的金額。

在香港特別行政區 訴 謝京峰 DCCC 714/2012 案中，被告被裁定一項“處理已知道或相信為代表從可公訴罪行的得益的財產”罪罪成，洗黑錢金額為港幣 8,500 萬元。控方申請向被告發出沒收令。在沒收法律程序完結前，被告因在印度被檢控而被追緝，在 2021 年 6 月被移交印度當局。控方在被告缺席的情況下，申請沒收被告總值港幣 504,542.84 元的可變現財產，以及其公司持有估值港幣 800 萬元的金銀業貿易場營業牌照。法庭在 2023 年 10 月頒下沒收令。

在 HCCP 567/2023 一案中，兩名居於海外的網上情緣騙案受害人分別把 14,000 歐元及 14,300 美元轉入由答辯人持有的香港銀行帳

was no requirement that a person must have been arrested or charged, or that proceedings have been instituted prior to the person's act of absconding. In this case, the respondent well knew that she would have been subject to arrest if she had remained in Hong Kong and had absconded to evade such arrest.

Some other notable cases handled by the Section are summarised below.

In *HKSAR v Ng Wai-shan* [2023] HKDC 1275, the defendant, an ex-clinical psychologist of the Social Welfare Department, deceived banks into providing her with a mortgage loan of about HK\$2.58 million and personal loans of approximately HK\$2.19 million in total by falsely representing that her property would be self-occupied, and that she was employed by a trading company and a consulting firm. As a matter of fact, the defendant's property had been leased out and she had not been employed by the said trading company or consulting firm, which were owned by the defendant and her mother respectively. The defendant was convicted of three charges of "fraud" and sentenced to 30 months' imprisonment. Upon the Prosecution's application under section 8 of Cap. 455, the District Court confiscated the defendant's crime proceeds of over HK\$238,000, representing the appreciation of her property attributable to the fraudulently obtained mortgage loan.

In *HKSAR v Xie Jingfeng* DCCC 714/2012, the defendant was convicted of one charge of "dealing with property known or believed to represent proceeds of indictable offence". The amount laundered was HK\$85,000,000. The Prosecution applied for a confiscation order against the defendant. Before the conclusion of the confiscation proceedings, the defendant was surrendered to the Indian authorities in June 2021 for want of prosecution in India. The Prosecution applied to have the defendant's realisable property with the aggregate value of HK\$504,542.84 and the trading licence held by his company with the Chinese Gold and Silver Exchange Society with an estimated value of HK\$8,000,000 confiscated in his absence. The confiscation order was granted in October 2023.

In HCCP 567/2023, two romance scam victims, who lived overseas, were respectively deceived into transferring EUR€14,000 and US\$14,300 into a bank account in Hong Kong held by the respondent. The respondent subsequently absconded from Hong Kong. A restraint order was obtained against the bank account, which had a total sum equivalent to approximately HK\$160,000. As the two victims decided not to initiate civil claims to recover their losses, a confiscation order was obtained by the Secretary for Justice in October 2023 to confiscate the total amount in the bank account.

戶。答辯人其後潛逃離開香港。法庭就該有相當於約港幣 16 萬元的銀行帳戶發出限制令。由於上述兩名受害人決定不提出民事申索追討損失，律政司司長於 2023 年 10 月取得沒收令，沒收該銀行帳戶內的全部款項。

除了向法院處理案件外，犯罪得益組人員也為執法機關主講關於刑事資產追討的研討會。2023 年 3 月，一名高級檢控官為警隊主講一場關於限制令和沒收令的研討會。2023 年 6 月及 11 月，一名檢控官為香港律師會的會員主講有關打擊洗黑錢 / 恐怖主義資金籌集活動的網路研討會。2023 年 9 月及 10 月，一名署理助理刑事檢控專員出席在法國里昂舉行的第二屆財務行動特別組織與國際刑警組織圓桌會議，討論透過加強國際合作應對全球金融罪案和有助追討資產的事宜。她還與律政司國際法律科和其他決策局的同事出席在法國巴黎舉行的財務行動特別組織間會及全體會議，各代表在會上就多個議題（包括財務行動特別組織就成員國在各自的法律制度中建立沒收制度提出的修訂建議）發表意見。

部門檢控 / 人權 A 組及 B 組

部門檢控 / 人權 A 組及 B 組於 2022 年成立，以分擔過去由兩個獨立組別（即人權組和部門檢控組）負責的職務。

2023 年，部門檢控 / 人權組的主要職責包括為逾 30 個部門執法機關提供法律指引，該等部門包括入境事務處、勞工處、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、社會福利署和差餉物業估價署。部門檢控 / 人權組的職責也涵蓋在刑事事宜（包括各級法院的審訊和上訴）以至司法覆核中出現的《基本法》和人權問題，從檢控角度提供法律指引。部門檢控 / 人權組的律師亦負責處理各級法院的審訊和上訴。

部門檢控 / 人權組在 2023 年合共提供 2,563 項法律指引。部門檢控工作牽涉的幾乎全是法定罪行，性質通常極為技術性，涉及艱澀的科學鑑證證據，以及複雜的法律問題，卻只有為

Apart from conducting cases in Courts, members of the Proceeds of Crime Section delivered seminars to law enforcement agencies on criminal asset recovery. In March 2023, a Senior Public Prosecutor gave a seminar to the Police on restraint and confiscation orders. In June and November 2023, a Public Prosecutor spoke in the Anti-Money Laundering/Counter-Financing of Terrorism Webinars to members of the Law Society of Hong Kong. In September and October 2023, an Acting Assistant Director of Public Prosecutions attended the Financial Action Task Force (FATF) – International Criminal Police Organization Roundtable Engagement II, a conference held in Lyon, France, with discussions on tackling global financial crimes through enhanced international collaboration and enabling asset recovery. She also attended the FATF Intersessional and Plenary meetings in Paris, France with colleagues from the International Law Division of the Department and other policy bureaux, in which delegates contributed to various topics, including the revised recommendations of the FATF to establish confiscation regimes in member-countries' legal systems.

Departmental Prosecutions / Human Rights Sections (A) & (B)

Departmental Prosecutions / Human Rights Sections (A) and (B) were established in 2022 to share the portfolios previously handled by two separate sections, namely Human Rights Section and Departmental Prosecutions Section.

The major responsibilities of the Departmental Prosecutions / Human Rights Sections in 2023 include giving legal advice to over 30 departmental law enforcement agencies including the Immigration Department, Labour Department, Buildings Department, Food and Environmental Hygiene Department, Lands Department, Mandatory Provident Fund Scheme Authority, Social Welfare Department and Rating and Valuation Department. Their 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 levels of Courts as well as judicial reviews. Counsel of the Sections are also responsible for conducting trials and appeals in all level of Courts.

In 2023, the Sections provided a total of 2,563 pieces of legal advice. Almost all of the offences under the departmental prosecutions portfolio were statutory offences which were often very technical in nature involving difficult scientific forensic evidence and complex legal issues with little jurisprudence for guidance. A large number of the cases were also highly sensitive

數不多的判例可供依據。高度敏感而備受傳媒關注的案件也為數不少，例如涉及工業意外導致死亡或重傷的案件。其中一宗關乎廣東歌流行組合“Mirror”的演唱會期間發生的意外，意外中香港體育館舞台上的一塊 LED 屏幕墮下，傷及兩名舞蹈員。其後發現該 LED 屏幕的懸吊系統並不安全，且具有墮下風險。涉事的總承辦商和負責安裝舞台裝置的分判商由於沒有履行作為工作地點佔用人的法定責任（即根據《職業安全及健康條例》（第 509 章）確保工作地點內的懸吊系統是安全的），並且沒有向勞工處呈報上述意外和另一宗在綵排期間發生的意外，因而被檢控。此外，分判商和受傷舞蹈員的僱主被控沒有按照第 509 章為僱員提供安全的工作系統、安全的工作環境和足夠的安全資訊。另外，受傷舞蹈員的僱主由於沒有為舞蹈員投取僱員補償保險單及向勞工處呈報該兩宗意外，被控違反《僱員補償條例》（第 282 章）。總承辦商、分判商和受傷舞蹈員的僱主各自承認控罪，分別被罰款港幣 22 萬元、42 萬元和 132,000 元。

部門檢控 / 人權組在 2023 年也面對一些新挑戰，包括涉及《業主與租客（綜合）條例》（第 7 章）第 IVA 部有關分間單位的規管租賃及《吸煙（公眾衛生）條例》（第 371 章）有關電子煙等另類吸煙產品的新增罪行的案件不斷增加。部門檢控 / 人權組亦於 2023 年負責一項新職務，就規管關乎一手住宅物業的售樓說明書、價單、示範單位、披露交易紀錄、廣告及售樓安排的《一手住宅物業銷售條例》（第 621 章）的案件提供法律指引。

儘管 2019 冠狀病毒病疫情在 2023 年終於有所緩和，但涉及相關罪行的案件在年內繼續出現。其中一宗涉及《商業租戶短期保護措施（2019 冠狀病毒病疫情）條例》（第 644 章），一名業主因在 2022 年 5 月 1 日至 2022 年 7 月 31 日有效的保護期內追討租金而被檢控，該名業主認罪。另一方面，在香港特別行政區訴范敏怡 [2024] HKCFI 90 案中，上訴人質疑現已廢除的《預防及控制疾病（佩戴口罩）規例》（第 599I 章）第 5A(1) 及 6(1) 條下就“任何人在進入或身處指明公眾地方時沒有一直佩戴口罩”的罪行是否合憲。原訟法庭在上訴中裁定該罪行合憲，並接納答辯人的陳詞，即該

and attracted much of the media's attention, such as those involving industrial accidents which resulted in fatalities or serious injuries. One such case concerned an accident during a concert of the popular Canto-Pop group “Mirror” in which a LED panel fell onto the stage of the Hong Kong Coliseum injuring two dancers. The LED panels' suspension system was later found to be unsafe and subject to the risk of falling. Prosecutions were initiated against the main contractor and subcontractor involved in setting up the stage for failing their statutory duties as occupiers of a workplace to ensure that the suspension system at the workplace was safe under the Occupational Safety and Health Ordinance (Cap. 509), and for failing to report to the Labour Department the said accident and another accident during a rehearsal. Further, the subcontractor and the employer of the injured dancers were prosecuted for failing to provide a safe system of work, a safe working environment, and sufficient safety information to their employees under Cap. 509. Additionally, the dancers' employer was prosecuted for contravening the Employees' Compensation Ordinance (Cap. 282) as it failed to take out employee's compensation insurance policies for the dancers and to report the two accidents to the Labour Department. The main contractor, the subcontractor and the dancers' employer pleaded guilty to their respective offences and were fined a total of HK\$220,000, HK\$420,000 and HK\$132,000 respectively.

2023 also saw some new challenges including an escalating number of cases involving the newly created offences under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) concerning regulated tenancies of subdivided units, and under the Smoking (Public Health) Ordinance (Cap. 371) concerning alternative smoking products such as e-cigarettes. Departmental Prosecutions / Human Rights Sections have in 2023 also taken up a new portfolio to give legal advice for cases under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) concerning regulations of sales brochures, price lists, show flats, disclosure of transaction information, advertisements, and sales arrangements relating to first-hand residential properties.

Although 2023 had finally seen the recession of the COVID-19 pandemic, cases involving the relevant offences continued to appear during the year. One of such cases involved the Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (Cap. 644) in which prosecution action was taken against a landlord who had taken rental enforcement actions during the protection period from 1 May 2022 to 31 July 2022, and the landlord had pleaded guilty. On the other hand, in the case of *HKSAR v Fan Man-ye Carol* [2024] HKCFI 90, the constitutionality of the offence of “failing to wear a mask at all times when the person is entering or present in any specified public place” contrary

罪行並無侵犯上訴人享有《基本法》第三十一條及《香港人權法案》第八條所訂明的遷徙自由的權利，原因包括制定該罪行的目的是為了防止、應付或紓緩當時的公共衛生緊急事態和保障香港的公眾健康，而案發時疫情正處於最嚴峻的時期，公共場所普遍有大量無症狀感染者。

此外，在人權領域方面，部門檢控／人權組處理了多宗涉及人權法議題的案件，其中一宗涉及司法覆核許可申請，即 *Tsang Ho-ming* 訴警務處處長及另一人 [2023] HKCFI 1518 案。案中申請人曾三次被警方截查香港身份證，他指稱每次均不符合《警隊條例》(第 232 章) 第 54(2) 條的規定，即有關警務人員須“合理地懷疑”申請人持有“任何相當可能對調查該人所犯或有理由懷疑該人已經或即將或意圖犯的罪行有價值的東西(不論就其本身或連同任何其他東西)”，但有關警務人員卻據此行使截查申請人的權力。申請人在申請中辯稱第 54(2) 條違憲，因為(一)該條違反根據《基本法》第二十八條及第三十一條，以及《香港人權法案》第五(一)條所訂他有權享有的身體自由；以及(二)第 54(2) 條的規定所用的措辭過於廣泛和含糊。法庭駁回申請人的申請，認為上述憲法權利沒有賦權申請人享有絕對的人身自由，而且沒有容許或允許任何人抗拒或阻撓公職人員正當執行合法職務。就申請人的案件而言，法庭指出，雖然警方根據第 54(2) 條決定採取的所有行動，均須基於對犯罪活動抱有合理懷疑且有客觀事實支持，但有關行動的侵擾程度須與支持所需信念的客觀事實相稱。與羈留以作查問或搜身等行動相比，單單要求出示香港身份證，未必需要很多理據支持有關決定。法庭又指出，任何人被要求出示香港身份證只會延誤其行程一兩分鐘，對其構成的滋擾微不足道，因此支持該要求所需的客觀事實的門檻不高。

to sections 5A(1) and 6(1) of the now repealed Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599) was challenged. The Court of First Instance held on appeal that the offence is constitutional, accepting the respondent's submissions that the offence did not infringe the appellant's right to freedom of movement enshrined under Article 31 of the Basic Law and Article 8 of the Hong Kong Bill of Rights because, *inter alia*, the offence was enacted for the purpose of preventing, combatting or alleviating the then public health emergency and protecting public health in Hong Kong, and at the time of the offence, the pandemic was at its height with a large number symptomless patients at large in public places.

Under the human rights portfolio, Departmental Prosecutions / Human Rights Sections also handled cases involving human rights issues, one of which involved an application for leave to apply for judicial review, namely, *Tsang Ho-ming v Commissioner of Police and another* [2023] HKCFI 1518. In this case, the applicant had been stopped by the Police for inspection of his Hong Kong identity card on three different occasions each allegedly without fulfilling the requirements that the police officers “reasonably suspect” that he had “anything that is likely to be of value (whether by itself or together with anything else) to the investigation of an offence that the person has committed, or is reasonably suspected of having committed or of being about to commit or of intending to commit” under section 54(2) of the Police Force Ordinance (Cap. 232), pursuant to which the police officers exercised their power to stop and search the applicant. The applicant argued in the application that section 54(2) was unconstitutional, because (a) it contravenes his right to liberty enshrined under Articles 28 and 31 of the Basic Law and Article 5(1) of the Hong Kong Bill of Rights; and (b) the requirements under section 54(2) are worded overly widely and vaguely. In dismissing the applicant's application, the Court held that the aforesaid constitutional rights do not confer on the applicant a right to absolute freedom of the person and do not permit or allow a person to resist or obstruct the due execution of lawful duty by public officers. In the context of the applicant's case, the Court noted that whilst all actions the Police decide to take under section 54(2) would require a reasonable suspicion of criminal activity supported by objective facts, the intrusiveness of the action has to be commensurate with objective facts supportive of the requisite belief. A simple request to show a Hong Kong identity card may not require much to justify the decision, in comparison to, say, a detention for making enquiry, or a search on the body. The Court also noted that being asked to produce one's Hong Kong identity card which delays one's journey for a minute or two only produces minimal disturbance on the person, and threshold for the objective facts needed to justify the request would be a low one.



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。原訟法庭轄下設三個組別，分別為分科三第 1A、1B 及 1C 組；區域法院轄下則設兩個組別，分別為分科三第 2A 及 2B 組。另設有分科三第 1D 組，其工作重點是跟進上級法院的審訊訟辯和上訴訟辯。

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，並須根據《檢控守則》所載的指引決定是否提出檢控。基本原則是，除非有充分的可接納證據令案件有合理機會達致定罪，而提出檢控乃符合公眾利益，否則不應展開檢控。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，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。

2023 年，分科三處理的案件數量仍然繁多，意味着該分科的人員繼續面對工作量沉重的挑戰。儘管如此，他們仍然全力以赴，務求以最佳水平履行職務。

分科三在 2023 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、1C 及 1D 組

分科三第 1A、1B、1C 及 1D 組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，確保案件在審訊或判刑前得到妥善準備。檢控官會在提供指引後，繼續與執法機關一同密切跟進其後的調查工作，以加強控方舉證，並負責處理案件交付審判的程序及相關法律程序事宜，以確保案件適時交付原訟法庭審訊或判刑。

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 two under the DC: section III(2)(A) and (B). There is also a section III(1)(D) with a work portfolio placing emphasis in trial and appellate advocacy in Higher Courts.

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 must act in accordance with the guidelines set out in the Prosecution Code in making a decision to prosecute or not to prosecute. The fundamental principle is that unless there is sufficient admissible evidence so that the case has a reasonable prospect of conviction, and that it is in the public interest to prosecute, no prosecution should be commenced. In addition, they handle appeals and other related matters at all levels of appellate Courts, while some experienced counsel in the six sections prosecute a broad range of sensitive criminal trials.

Caseload still stayed at a high level in year 2023 which translated into a continuing challenge in terms of 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 2023 are set out below where some notable cases are highlighted.

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

Public Prosecutors in Sections III(1)(A), (B), (C) and (D) 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 or sentence. After giving legal advice, Public Prosecutors would continue to work closely with the law enforcement agencies to follow up on further enquiries with a view to strengthening the prosecution case and be responsible for carrying the case through the committal proceedings and attending to procedural matters, to ensure that cases are committed to the CFI for trial or sentence in a timely manner.

就交付原訟法庭審訊的案件，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。就交付原訟法庭判刑的案件，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。

2023 年，交付原訟法庭的案件有 443 宗，其中 127 宗交付審訊（有兩宗案件的被告根據《裁判官條例》（第 227 章）第 80C(1) 條選擇在裁判法院進行初級偵訊，其後交付審訊），316 宗交付判刑。此外，有三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 陳雪萍 [2023] HKCFI 1755 案中，被告勒死患自閉症、中度智障、癲癇症和有行為問題的 21 歲兒子，其後試圖自殺不果，面對一項謀殺罪。鑑於被告因照顧兒子的壓力患上抑鬱症，在神志失常的情況下作出有關行為，這足以使她對其作為的意識責任大為減輕，控方根據減責神志失常的原則接納被告承認謀殺。法庭按兩名精神科醫生的建議，根據《精神健康條例》（第 136 章）第 45 條判處被告服入院令一年。
- (2) 在香港特別行政區 訴 曾民愷及 Wong Yuk-ming [2023] HKCFI 2392 案中，兩名被告涉及同一項販運 502.977 公斤草本大麻的罪行。該批草本大麻市值約港幣 110,151,963 元，放入貨櫃由加拿大船運至香港。在加拿大被招攬來港負責大麻開箱拆貨的 Wong 認罪，被判處監禁 16 年。曾姓被告在該次把大麻運入本港行動的角色比 Wong 重要得多，經審訊後被裁定罪名成立，判處監禁 25 年。
- (3) 香港特別行政區 訴 王晉全 [2023] HKCFI 3091 關乎一宗在 1983 年干犯強姦罪的舊案。案中被告尾隨一名 13 歲女童至其胞姊的公共屋邨單位，入內後把受害人綁起並盜去少量現金，繼而把她強姦。警方曾經從抽屜櫃套取到一個掌紋。受害人事後患上嚴重抑鬱，於 1999 年自殺身亡。被告身分多年來一直未明，直至 2008 年警

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. 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.

In 2023, 443 cases were committed to the CFI, of which 127 cases were committed for trial, including two cases after preliminary inquiry at the Magistracy pursuant to an election by the defendants under section 80C(1) of the Magistrates Ordinance (Cap. 227), and 316 cases were committed for sentence. In addition, three indictments were filed pursuant to orders for retrial made by the appellate Courts.

Some significant cases heard in the CFI:

- (1) *HKSAR v Chen Xueping* [2023] HKCFI 1755, the defendant strangled to death her 21-year-old son, suffering from autism, moderate grade mental retardation, epilepsy and having behavioural problem. She attempted suicide but survived. She faced one count of murder. The Prosecution accepted the defendant's guilty plea to manslaughter on the basis of diminished responsibility as her actions arose from depressive disorder, i.e. an abnormality of mind which developed, inter alia, from the stress in taking care of her son which substantially impaired the defendant's mental responsibility for her acts. On the recommendation of two psychiatrists, the Court sentenced the defendant by imposing a hospital order for one year pursuant to section 45 of the Mental Health Ordinance (Cap. 136).
- (2) *HKSAR v Tsang Man-hoi, William and Wong Yuk-ming* [2023] HKCFI 2392, the two defendants were involved in the same offence of trafficking in 502.977 kg of herbal cannabis, with estimated street value of HK\$110,151,963, placed in a container shipped from Canada to Hong Kong. Wong, being recruited in Canada for travelling to Hong Kong to unpack the cannabis, pleaded guilty and was sentenced to 16 years' imprisonment. Tsang, playing a much more significant role than Wong in the importation operation, was convicted after trial and sentenced to 25 years' imprisonment.
- (3) *HKSAR v Wong Chun-chuen* [2023] HKCFI 3091, an old rape offence committed in 1983. The defendant followed a 13-year-old girl to her sister's public housing estate unit. When inside the flat, he tied the victim up, stole a little cash, and then raped her. A palm print was lifted from a chest drawer. In 1999, the victim, severely depressed after the incident, committed suicide. For many years, the defendant

方的指紋鑑證系統電腦化後才被識別。被告最終在 2021 年被捕，並承認控罪。法庭指被告對受害人造成的創傷使她無法過正常生活，判他監禁七年。

區域法院：分科三第 2A 及 2B 組

該兩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。2023 年，該兩個組別的律師提供合共 1,923 項法律指引，並透過稱為“FAST”的特快法律指引制度處理另外 274 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。

2023 年確實充滿挑戰。在區域法院檢控的電話詐騙和洗黑錢案件數目仍然高企。該等案件通常涉及易受傷害的受害人，以八、九十歲的長者為主。罪犯設計使他們相信親屬正被羈留，需要付款才能獲釋，致使受害人很多時會交出大額現金。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，控方會根據《有組織及嚴重罪行條例》(第 455 章)的條文申請加刑。2023 年，在區域法院提起的電話詐騙檢控有 178 宗。

區域法院審理的一些重要案件如下：

- (1) 香港特別行政區 訴 *F.S.L. 及另一人* [2023] HKDC 1653 是一宗虐兒案，案中受害人 X 當時五歲。第一被告是前警務人員，案發時與其女友，即第二被告及其女兒 X 同住。某天，第二被告替 X 洗澡，其間曾把 X 短暫獨留在淋浴間，第一被告主動用熱水為 X 淋浴，以致燙傷 X。其後 X 的右半身脫皮。第一和第二被告在事後僅在 X 的傷處塗燒燙傷膏約一星期。X 沒有得到任何適當的檢查或醫治，直至一個多月後社工發現她受傷。X 的右臉、頸部及主要右

remained unidentified until the computerisation of the Police fingerprint matching system in 2008, and he was eventually arrested in 2021. The defendant pleaded guilty. The Court observed that the trauma the defendant caused had prevented the victim from having a normal life and sentenced him to seven years' imprisonment.

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

Public Prosecutors in these two 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 2023, counsel of the two sections rendered a total of 1,923 pieces of advice, and handled a further 274 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.

The year of 2023 was a challenging year. In 2023, the number of cases of telephone deception as well as money laundering prosecuted in the DC continued to stay at a high level. 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 which causes the victim to hand over on multiple occasions large amounts of cash. 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 2023, 178 prosecutions of telephone deception were instituted at the DC.

Some significant cases heard in the DC:

- (1) *HKSAR v F.S.L. and another* [2023] HKDC 1653, a child abuse case concerning a five-year-old victim, X. D1, a former Police officer, cohabited with his girlfriend, D2, and X, being D2's daughter. One day, when D2 left X unattended briefly at the shower, D1 took the initiative to shower X with hot water that scalded X. The skin on the right half of X's body later peeled off. D1 and D2 had only applied some ointment for burns on X's injuries for about one week after the scalding incident. X did not receive any proper medical examination or treatment until over one month later, when a social worker discovered X's injuries. X suffered from an extensive scald injury with

半身大範圍燙傷，傷口癒合欠佳，而且受感染。X 被燙傷後出現繼發性夜遺尿（尿牀）的情況，亦曾投訴第一被告經常打她，要她捱餓。經答辯商討後，第一被告就燙傷 X 承認一項虐待或忽略兒童罪。法庭指第一被告備受責難的行為“殘酷邪惡”，判他監禁 28 個月。第二被告在 X 被燙傷後沒有向她提供足夠或適當的治療，經審訊後被裁定一項虐待或忽略兒童罪名成立，判監 15 個月。

- (2) 在香港特別行政區 訴 游鑫及另兩人 [2023] HKDC 1497 及 [2023] HKDC 1137 案中，受害人於 2020 年 12 月 12 日行經上環信德中心時，突然遭第二及第三被告從後襲擊。受害人在案發時是獲調派至中央人民政府駐香港特別行政區聯絡辦公室工作的中國內地居民。該次襲擊對準受害人的頭部，手法暴力。受害人多處受傷，包括左肩骨折。第一被告僅從旁攝錄襲擊經過。第一至第三被告共同被控一項有意圖而導致身體受嚴重傷害罪（第一項控罪），而第三被告另被控一項沒有按照法庭的指定歸押罪（第二項控罪）。各方在審訊前已知悉受害人未能出庭作供。經答辯商討後，第二及第三被告承認對他人身體加以嚴重傷害的交替控罪，第三被告亦承認第二項控罪。第二被告被判監十個月，第三被告則被判監 12 個月。第一被告經審訊後被裁定對他人身體加以嚴重傷害的交替控罪成立，判監十個月零兩星期。主審法官在判刑時考慮了多項加刑因素，例如此案屬有預謀和經策劃而行動的共同犯罪計劃。
- (3) 在香港特別行政區 訴 胡詠心 [2023] HKDC 580 及 [2023] HKDC 773 案中，受害人是一名在港讀書的 19 歲中國內地居民。被告的同黨假冒中國內地官員致電受害人，騙其相信必須協助一項據稱刑事調查，以證明本身並無嫌疑。被告在與受害人見面時，向其出示據稱國際刑警證件，然後安排受害人留在酒店房間，並拿走其手提電話。與此同時，被告的同黨致電受害人身處中國內地的父親，索取港幣或人民幣 2,000 萬元贖金，受害人才能獲釋。警方

poor healing and infection over her right face and neck, and mainly right side of the body. X developed secondary nocturnal enuresis (bed wetting) after the scald injury. X also complained of being hit and starved frequently by D1. Upon plea negotiation, D1 pleaded guilty to one count of ill-treatment or neglect of child regarding the scalding. The Court regarded D1's impugned conduct as "a torturous evil act" and sentenced him to 28 months' imprisonment. D2 was convicted after trial of one count of ill-treatment or neglect of child with respect to the failure to provide adequate or proper medical treatment to X after the scalding incident. The Court sentenced D2 to 15 months' imprisonment.

- (2) *HKSAR v You Xin and 2 others* [2023] HKDC 1497 and [2023] HKDC 1137, on 12 December 2020, D2 and D3 suddenly attacked the victim from behind when the latter walked past Shun Tak Centre, Sheung Wan. The victim was at the material time a Mainland China resident and posted to the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. The attack was violent and aimed at the victim's head. The victim sustained multiple injuries including fracture on his left shoulder. D1 only filmed the attack by the side. D1 to D3 faced one joint count of causing grievous bodily harm with intent (Charge 1). D3 also faced another count of failing to surrender to the Court's custody (Charge 2). Before the trial, it was known that the victim was not available to testify in Court. Upon plea negotiation, D2 and D3 pleaded guilty to the alternative charge of causing grievous bodily harm, and D3 also pleaded guilty to Charge 2. D2 was sentenced to 10 months' imprisonment and D3 to 12 months' imprisonment. D1 was convicted after trial of the alternative charge causing grievous bodily harm. D1 was sentenced to 10 months and two weeks' imprisonment. In sentencing, the trial judge took into account aggravating factors such as premeditation, planning and acting in joint criminal enterprise.
- (3) *HKSAR v Wu Wing-sum* [2023] HKDC 580 and [2023] HKDC 773, the accomplices of the defendant pretended to be Mainland China officials deceived over the telephone that the 19-year-old victim, a Mainland China resident studying in Hong Kong, into believing that the victim was required to assist in a purported criminal investigation in order to confirm that the victim was not a suspect. Upon meeting up, the defendant showed the victim a purported Interpol identification document and then arranged the victim to stay in a hotel room with the victim's own mobile phone taken away. Meanwhile, her accomplices called the victim's father in the Mainland China and demanded a sum of \$20,000,000,



其後在酒店尋回受害人及被告，受害人的父親並無向匪徒支付分文。被告經審訊後被裁定一項串謀詐騙罪名成立，被判監三年零六個月。

- (4) 香港特別行政區 訴 W.Z.W [2023] HKDC 1798 是一宗涉及性虐待和身體虐待的案件。案中 74 歲被告面對合共七項控罪，包括自 2014 年起對兩名當時分別八歲和十歲的內孫女 X 和 Y 干犯的虐待兒童罪、猥褻侵犯罪、刑事恐嚇罪及襲擊致造成身體傷害罪。2022 年，X 向學校社工透露有關事件。經答辯商討後，被告承認該七項控罪的其中五項，包括因掐住 X 的頸項把她舉至離地而被控的一項故意襲擊導致兒童受到損害罪、因分別對 X 和 Y 施以性虐待而被控的三項猥褻侵犯罪，以及因毆打 Y 以致其右手食指流血及左前臂和雙膝瘀傷而被控的一項襲擊致造成身體傷害罪。法庭判處被告監禁合共四年零七個月。

除上述職務外，該六個組別的檢控官也負責監督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（由其他分科處理有關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／或所判處的刑罰提出的上訴及上訴許可申請。在 2023 年，由被定罪的被告提出的上訴申請有 256 宗，其中 121 宗被駁回，16 宗獲判得直，119 宗由被告放棄上訴。

HKD or RMB, as ransom for the victim's release. The Police subsequently located both the victim and the defendant at the hotel. The victim's father paid nothing to the criminals. The defendant was convicted after trial of one count of conspiracy to defraud and sentenced to three years and six months' imprisonment.

- (4) *HKSAR v W.Z.W* [2023] HKDC 1798, a sexual and physical abuse case. The 74-year-old defendant faced totally seven charges comprising child abuse, indecent assault, criminal intimidation and assault occasioning actual bodily harm committing against his two paternal granddaughters, X and Y since 2014 when they were respectively aged eight and 10. In 2022, X revealed the incidents to her school social worker. Upon plea negotiation, the defendant pleaded guilty to five of the seven counts, including one count of wilful assault causing injury to a child for grabbing X by her neck to lift her off the ground, three counts of indecent assault in respect of the sexual abuses against X and Y respectively, and one count of assault occasioning actual bodily harm for beating up Y who suffered bleeding on her right index finger and bruising over her left forearm and both knees. The Court sentenced the defendant to a total term of four years and seven months' imprisonment.

In addition to the duties mentioned above, Public Prosecutors in the six sections are also responsible for monitoring 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 2023, 256 appeal applications were brought by the convicted defendants, of which 121 were dismissed, 16 were allowed and 119 were abandoned.

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。

本分科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，就區域法院法官裁定無罪的個別案件以案件呈述方式提出上訴；以及應否根據《刑事訴訟程序條例》（第 221 章）第 81A 條，就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，以及在無罪裁定涉及錯誤的法律觀點或裁定屬有悖常情（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。

2023 年，律政司司長共提出四宗覆核刑罰申請，包括一宗原訟法庭案件和三宗區域法院案件，其中兩宗在年內由上訴法庭審理，一宗獲判得直，一宗被駁回。

該六個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。2023 年，在區域法院及原訟法庭被定罪的被告向終審法院提出的上訴許可申請有 68 宗。只有十宗獲批上訴許可，另有三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 *L.C.L.* 及另二人 [2023] HKCA 1301 案中，三名申請人曾在一宗涉及少年申訴人父親的強姦審訊中干擾申訴人，致使她撤回申訴，三人因而被裁定串謀妨礙司法公正罪成。上訴法庭駁回他們就定罪提出的上訴許可申請。法庭確認，在被告有法律代表並且選擇不傳喚他人作證的情況下，控方律師有權在審

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 provide future guidance on the lower Courts, notwithstanding 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 conclusion, will an appeal by way of case stated be pursued. 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 2023, a total of four applications for review of sentence were lodged by the Secretary for Justice, in which one was arising from the CFI, and three from the DC. Two of those applications were heard by the CA within that year, of which one were allowed, one was dismissed.

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 2023, 68 applications for leave to appeal were brought by the convicted defendants in DC and CFI to the CFA. Leave to appeal was granted only in 10 cases, and three cases were allowed by the CFA.

Below are some notable cases:

(1) *HKSAR v L.C.L. and 2 others* [2023] HKCA 1301, the CA dismissed the applications for leave to appeal against convictions of conspiracy to pervert the course of justice by the three applicants, who had interfered with the juvenile complainant leading to the retraction of her complaint in the

訊中作出結案陳詞；法庭亦拒絕訂立任何硬性規則以限制每宗案件中結案陳詞的內容。因應律政司司長提出的刑罰覆核申請，第二及第三申請人（申請人的祖母及叔父）的刑期由監禁四年零九個月增至六年，至於第一申請人（申請人父親，亦即串謀的策劃者和最終得益者），其判刑由監禁六年零六個月增至九年零六個月。

- (2) 在香港特別行政區 訴 許金山 (2023) 26 HKCFAR 556 案中，終審法院批准上訴人就謀殺妻女的定罪提出上訴。2015 年 5 月 22 日午後不久，上訴人的妻子和女兒被發現在距離寓所約 1.6 公里的巴士站的家用私家車內不省人事，送院後證實死亡，死因是一氧化碳中毒。私家車車尾箱內發現一個瑜伽球。上訴人是本港一所大學的麻醉及深切治療學系副教授，據稱為進行醫學研究取得一氧化碳，把兩個瑜伽球注滿一氧化碳並帶回家。控方案情指，上訴人把一個注滿一氧化碳的瑜伽球放在車尾箱，並取走瑜伽球氣塞，意圖殺死與他關係失和的妻子，女兒並不是他意圖加害的人。該瑜伽球並非警方調查初期的重點。直至 2015 年 11 月左右，警方才意識到一氧化碳來自該瑜伽球。因此，直至事發約六個月後，警方才搜尋該遺失的氣塞。控方在審訊時請陪審團推斷上訴人把沒有氣塞的瑜伽球放入車內。辯方案情則指，上訴人的女兒把瑜伽球放在車內，並拔去氣塞滅蟲。終審法院撤銷定罪，理由是原審法官就該遺失的氣塞發出的指示，實際上容許陪審團忽視氣塞有可能在警方搜車前被放到別處或誤取，並憑揣測推斷車尾箱在兩名受害人死亡時的情況。終審法院下令就謀殺控罪進行重審。

rape trial of her father. The Court confirmed the right of the prosecuting counsel to make a closing speech in a trial where a defendant who is legally represented elects not to give or call any evidence, and refused to lay down any rigid rule to restrict the contents of such speeches in each and every case. On the application for review of sentence by the Secretary for Justice, the sentences on the second and third applicants (the complainant's paternal grandmother and uncle) were increased from four years and nine months' imprisonment to six years' imprisonment, whereas the sentence on the first applicant (the complainant's father, being the orchestrator of the conspiracy and the ultimate beneficiary of it) was raised from six years and six months' imprisonment to nine years and six months' imprisonment.

- (2) *HKSAR v Khaw Kim-sun* (2023) 26 HKCFAR 556, the CFA allowed the appellant's appeal against convictions for murder of his wife and daughter. In the early afternoon of 22 May 2015, his wife and his daughter were found unconscious in the family car at a bus stop about 1.6 km from home. They were certified dead when sent to the hospital and their cause of death was carbon monoxide poisoning. A yoga ball was found in the boot of the car. The appellant was an Associate Professor in the Department of Anaesthesia and Intensive Care at a local university. He obtained carbon monoxide purportedly for medical research purpose, filled two yoga balls with carbon monoxide and brought them home. The prosecution case was that the Appellant placed a carbon-monoxide-filled yoga balls in the boot of the car and removed its stopper intending to kill his estranged wife. His daughter was an unintended victim. The yoga ball was not the focus of the early stages of the Police investigation. It was only in about November 2015 that the Police realized that the source of the carbon monoxide was the yoga ball. Hence, no search was conducted for the missing stopper until about 6 months after the incident. At trial, the Prosecution invited the jury to draw an inference that it was the appellant who placed the unstoppered yoga ball inside the car. The Defence case was that his daughter had placed the yoga ball in the car and unplugged the stopper in order to kill insects. The CFA quashed the convictions on the basis that the trial judge's directions regarding the missing stopper had in effect allowed the jury to ignore the possibility of the stopper being displaced or mistakenly taken away before the car was searched by the Police, and to draw an inference as to the state of the boot at the time of the deaths based on conjecture. A retrial on the charges of murder was ordered.



分科四（商業罪案） Sub-division IV (Commercial Crime)

分科四由兩個商業罪案法律指引組和兩個廉政公署法律指引組組成，負責處理林林總總的白領罪行。本分科專責就罪案的審訊和上訴提供法律指引和作出檢控，所涉罪行包括商業詐騙、洗黑錢、行賄貪污、選舉不當行為、市場失當行為和稅務詐騙。本分科尤其專責處理違反《防止賄賂條例》（第 201 章）、《選舉（舞弊及非法行為）條例》（第 554 章）、《有組織及嚴重罪行條例》（第 455 章）、《證券及期貨條例》（第 571 章）、《保險業條例》（第 41 章）及《稅務條例》（第 112 章）的案件。

該等罪案由本分科負責提供法律指引和作出檢控，而調查工作則由執法機關負責，包括香港警務處（特別是商業罪案調查科和財富情報及調查科）、廉政公署、證券及期貨事務監察委員會（證監會）、保險業監管局（保監局）及稅務局。2023 年 7 月，為一手住宅物業銷售監管局（銷售監管局）的調查案件提供法律指引的工作已重新調配由分科二的部門檢控／人權組負責。

分科律師會向執法機關就是否進行檢控提供法律指引。該決定是基於是否有充分證據顯示有合理機會達致定罪，以及進行檢控是否合乎公眾利益。如案件提出檢控屬適當，分科律師會就適當的控罪和進行審訊的法院提供法律指引，並盡可能負責檢控相關的案件。部分案件則會委託具相關專長的外判律師代表進行檢控。分科律師會密切監察審訊結果，如有上訴或覆核需要，便會提出上訴，並就該等上訴和覆核進行檢控和訟辯。

2023 年，分科四共有 31 名律師，分別委派至四個組別，即分科四第 1A 組、第 1B 組、第 2A 組及第 2B 組。首兩組會就警方（主要為商業罪案調查科和財富情報及調查科，但也包括警方其他單位）調查的案件提供法律指引，而第 1B 組同時就保監局、稅務局及證監會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，前者一般負責處理涉及公營機構貪污和選舉罪行的案件，而後者則負責私營機構貪污案件。本分科的律師在 2023 年曾提供 2,113 項書面及口頭法律指引，出庭日數共 1,099.5 日。下文載述各組別在年內處理的一些值得關注案件。

Being responsible for a diverse portfolio of white-collar crimes, Sub-division IV comprises the two Commercial Crime Advisory Sections and the two ICAC Advisory Sections. The Sub-division specializes in advising on and prosecuting the trials and appeals of offences including commercial deception, money laundering, bribery and corruption, election misconduct, market misconduct and revenue fraud. In particular, the Sub-division specializes in cases of infringement of the Prevention of Bribery Ordinance (Cap. 201), the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Organized and Serious Crimes Ordinance (Cap. 455), the Securities and Futures Ordinance (Cap. 571), the Insurance Ordinance (Cap. 41) and the Inland Revenue Ordinance (Cap. 112).

Whilst the Sub-division advises on and prosecutes such offences, they are investigated by the law enforcement agencies, including the Hong Kong Police (in particular, their Commercial Crime Bureau ("CCB") and Financial Intelligence and Investigation Bureau ("FIIB")), the Independent Commission Against Corruption ("ICAC"), the Securities and Futures Commission ("SFC"), the Insurance Authority ("IA") and the Inland Revenue Department ("IRD"). The advice on cases investigated by the Sales of First-hand Residential Properties Authority ("SRPA") was re-deployed to be advised by the Departmental Prosecutions / Human Rights Section under Sub-division II in July 2023.

Our Counsel provide legal advice to the law enforcement agencies on whether to proceed with a prosecution. A decision is made on whether there is sufficient evidence to support a reasonable prospect of conviction and whether it is in the public interest to prosecute. If a prosecution is warranted, advice is also given on what the appropriate charges are and on the venue of trial. Whenever possible, our Counsel will prosecute the trials arising from advice of the Sub-division, whereas some of the trials would be briefed out to specialized fiat Counsel to prosecute on our behalf. The results of the trials are carefully monitored by our Counsel such that whenever an appeal or review is required, appellate actions would be undertaken; and in that event, our Counsel will prosecute and argue the appeals and reviews.

In 2023, Sub-division IV comprised 31 Counsel appointed in four sections:- 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, and SFC 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. In the year of 2023, Counsel of the Sub-division gave 2,113 pieces of advice, written and oral, and attended Court for a total of 1,099.5

分科第四 1A 組—商業罪案 (A)

在香港特別行政區 訴 陳克恩及另兩人 HCCC 83/2014 案中，三名被告經審訊後被裁定兩項串謀詐騙罪名成立，而第一被告另因處理上述串謀詐騙罪行的得益，被裁定一項洗黑錢罪成。終審法院其後撤銷各被告的定罪，並下令重審。

案件以高等法院原訟庭刑事案件 HCCC 309/2019 進行重審，陪審團裁定全部被告各項串謀詐騙罪名成立。第一被告是一家香港上市公司的聯席主席，第二被告是一家新西蘭公司的東主，而第三被告則為第二被告所聘用的會計師。各被告被指在上市公司的公告和通函內作虛假陳述，串謀詐騙該上市公司的股東及香港聯合交易所。他們在收購第二被告的牧場一事上作出虛假陳述，包括訛稱第二被告屬於獨立第三方。事實上，依據一份由第一與第二被告簽訂的佣金分配協議，第二被告在該項收購中擁有實益權益。此外，第三被告也提供偽造的會計記錄，隱瞞牧場真實的財務狀況。

第一、第二及第三被告分別被判監七年零三個月、七年零九個月及四年零九個月，而第一及第二被告另被取消出任公司董事的資格，為期六年零九個月。

在香港特別行政區 訴 *Marquez Charity Alonzo* 及另四人 [2023] HKDC 1307 案中，洗黑錢集團藉招募在香港工作的外籍家庭傭工（外傭）為傀儡帳戶持有人，以收取犯罪得益。第一被告是該集團招募的一名外傭，負責操控最少 68 個由其他外傭開設的銀行帳戶，並經上述帳戶清洗超過港幣 3,000 萬元。其後，第一被告交棒給另一名外傭，即第二被告。從一次秘密行動中監察得知，第一被告監督第二被告如何管理傀儡帳戶。同為外傭的第三、第四及第五被告把其戶口售予該集團，成為傀儡帳戶持有人。

所有被告承認各自被控的串謀處理代表從可公訴罪行的得益的財產罪。法庭在判刑時確認，本案涉及有組織罪行。第一被告被判監 30 個月，第二至第五被告各被判監 16 個月。

Court days. Below are some of the notable cases handled by each section in the year.

Section IV(1)A – Commercial Crime (A)

In *HKSAR v Chen Keen and 2 others* HCCC 83/2014, the three defendants were convicted after trial of two counts of conspiracy to defraud. D1 was also convicted of a count of money laundering in respect of his dealing with the proceeds of such conspiracies to defraud. Their convictions were subsequently quashed by the Court of Final Appeal with a retrial ordered.

After a retrial in HCCC 309/2019, the jury returned guilty verdicts against all of the defendants on the counts of conspiracy to defraud. D1 was the co-chairman of a publicly listed company in Hong Kong, D2 was the owner of a company in New Zealand and D3 was an accountant engaged by D2. It was alleged that they had conspired together to defraud the shareholders of the listed company and the Hong Kong Stock Exchange by making false representations in the listed company's announcement and circular. In respect of the acquisition of D2's farms, *inter alia*, it was falsely represented that D2 was an independent third party. In fact, D2 had beneficial interest in the acquisition pursuant to a commission sharing agreement signed between D1 and D2. The true financial position of the farms had also been concealed by the false accounting records provided by D3.

D1 was sentenced to seven years and three months' imprisonment, D2 to seven years and nine months' imprisonment, and D3 to four years and nine months' imprisonment. D1 and D2 were disqualified from becoming company directors for a period of six years and nine months.

The case of *HKSAR v Marquez Charity Alonzo and 4 others* [2023] HKDC 1307 involved a money laundering syndicate that recruited foreign domestic helpers working in Hong Kong ("FDH") as stooge account holders for receiving crime proceeds. D1 was a FDH recruited by the syndicate. She was given control of at least 68 bank accounts opened by other FDHs and had laundered over HK\$30 million through the said accounts. D1 later passed her torch to D2, another FDH. D2 was observed to be supervised by D1 on how to manage the stooge accounts during a covert operation. D3, D4 and D5, all being FDHs, were stooge account holders who had sold their accounts to the syndicate.

The defendants all pleaded guilty to their respective charges of conspiracy to deal with property representing proceeds of an indictable offence. In sentencing, the Court acknowledged that

在香港特別行政區 訴 譚信武 [2023] HKDC 1407 案中，被告經審訊後被裁定一項串謀處理代表從可公訴罪行的得益的財產罪罪名成立。這宗案件源於 2019 年一宗涉及一家烏拉圭公司的電郵騙案，該公司被騙向香港一間金錢服務經營者付款。該金錢服務經營者按照騙徒的指示，把款項分發至各指定銀行帳戶，包括把 25 萬美元匯入由被告以公司名義開設的銀行帳戶。被告是該公司帳戶的唯一獲授權簽署人，也是有關公司唯一的股東和董事。經該公司帳戶收取和耗散的總額逾 6,100 萬美元。

被告在警誡下供認他經朋友介紹把帳戶售予一名內地人。於審訊中，被告作供時聲稱他相信帳戶買家的業務合法。法庭在詳細考慮後，拒絕接納被告所作的聲稱。被告經審訊後被裁定罪名成立。法庭裁定，基於被告把其銀行帳戶售予一名內地人以清洗來自境外的犯罪得益，因此案件涉及國際元素。被告被判監四年零九個月。



the present case involved an organized crime. D1 was sentenced to 30 months' imprisonment. For D2 to D5, each was sentenced to 16 months' imprisonment.

In *HKSAR v Tam Shun-mo* [2023] HKDC 1407, the defendant was convicted after trial of a charge of conspiracy to deal with property representing proceeds of an indictable offence. This case originated from an email fraud in 2019 against a company in Uruguay, which was defrauded into making payments to a money service operator ("MSO") in Hong Kong; the MSO acted in accordance with the fraudsters' instructions and distributed payments to designated bank accounts, including US\$250,000 to a bank account opened by the defendant in the name of a company. The defendant was the sole authorized signatory of the said corporate account. He was also the sole shareholder and director of the company. The total sum received and dissipated in that corporate account exceeded US\$61 million.

Under caution, the defendant confessed that he had sold his account to a Mainlander, introduced by his friend. At trial, the defendant testified and claimed he had trust in the legitimacy of the account buyer's business. In a thorough judgment, the Court rejected the defendant's claim and convicted him after trial. The Court found there was international element given the defendant had sold his bank account to a Mainlander for laundering proceeds from abroad. The defendant was sentenced to four years and nine months' imprisonment.

Section IV(1)B – Commercial Crime (B)

In *HKSAR v Lai Wun-yin* [2023] 2 HKLRD 85, the appellant was convicted after trial of a charge of conspiracy to defraud and was sentenced to seven years' imprisonment. The appellant was alleged to have conspired with her husband to circulate funds between China Metal Recycling (Holdings) Ltd ("CMR") and some of its purported customers and suppliers to overstate the profits of CMR, thus inducing the Hong Kong Stock Exchange ("HKEx") to approve CMR's 2009 listing application. The appellant was the non-executive director of CMR and signed on various financial documents submitted by CMR on which the HKEx relied when considering CMR's listing application. Her main defence was that she was not involved in the affairs of CMR.

The appellant appealed to the Court of Appeal on the sole ground that whether the Prosecution could challenge the opinion of the defence expert in cross-examination when the expert engaged by the Prosecution had given a similar opinion, that one document might not have been written by the appellant, but had

分科四第 1B 組—商業罪案 (B)

在香港特別行政區 訴 黎煥賢 [2023] 2 HKLRD 85 案中，上訴人經審訊後被裁定一項串謀欺詐罪罪名成立，判監七年。上訴人涉嫌串謀丈夫通過在中國金屬再生資源（控股）有限公司（中金再生）與若干假冒的客戶和供應商之間流轉資金，誇大公司的利潤，從而促使香港交易所（港交所）批准中金再生在 2009 年的上市申請。上訴人是中金再生的非執行董事，曾在公司提交的多份財務文件上簽署，而港交所正是依據這些文件考慮上述上市申請。上訴人主要辯稱自己沒有參與中金再生的事務。

上訴人向上訴法庭提出上訴的唯一理由是辯方專家指某份文件或許並非出自上訴人手筆，而控方專家也曾提出相若意見，但未被傳召作供；在此情況下，控方於盤問辯方專家時可否質疑辯方專家這項意見。法院認為，若控方律師就一項自知真確或有真憑實據支持的事宜提出爭議，是有違基本公平原則。與此同時，控方律師有權質疑辯方證據，驗證該等證據是否真實可靠。雖然控方專家提出相若意見，但雙方專家的意見，均建基於他們各自依賴的材料，更附加了多項限定性說明。因此，上訴的爭議點是兩位專家所作結論的基礎為何，以及他們在達致意見時所附加的限定性說明。控方律師盤問辯方筆迹專家的方式並無不妥或不當，法院因此駁回就定罪提出的上訴。

在香港特別行政區 訴 正雅印刷廠（香港）有限公司及另兩人 [2023] HKDC 782 案中，第二和第三被告分別為第一被告公司的董事和總經理，他們要求客戶向由第二被告控制的另一公司繳付貨款，而該公司收款後只把當中部分款項轉入第一被告的銀行戶口，藉以蓄意協助第一被告逃繳三個財政年度的利得稅。此外，相關交易原有的需繳貨款通知書亦以虛假的通知書取代，其目的是使第一被告所收到的較低額貨款與營業額相符。第一至第三被告否認全部 11 項控罪，包括擬備或備存虛假的帳簿或其他記錄、在報稅表上簽署而該報稅表是該人無合理理由相信屬實的，以及在報稅表中漏報原應申報的款項。各被告經審訊後被裁定各自的

not been called to give evidence. On appeal, it was held that it would be contrary to the fundamental principles of fairness for prosecuting Counsel to contest a matter which he knew to be true or supported by substantive evidence. At the same time, prosecuting Counsel was entitled to challenge defence evidence to test its veracity and reliability. Even though the Prosecution expert expressed a similar opinion, both experts heavily qualified their opinions because of the material on which they were based. The issue, therefore, was the basis of their conclusion and the qualifications they made in arriving at their opinion. It was not improper or inappropriate for prosecuting Counsel to have cross-examined the defence handwriting expert in the manner he did. Thus, the appeal against conviction was dismissed.

In *HKSAR v Artwell Printing Factory (HK) Limited and 2 others* [2023] HKDC 782, D2 and D3, being the director and the manager of D1 respectively, wilfully assisted D1 to evade profits tax in three financial years by asking its customers to make payments to another company which was under the control of D2, and that company, after receiving the payments, to only forward part of the payments to D1's bank account. Furthermore, in order to make the reduced payments received by D1 tally with the sales records, the original debit notes of the relevant transactions were replaced by false debit notes. D1 to D3 pleaded not guilty to all 11 charges they faced, including preparing or maintaining false books of account or other records, signing a tax return without reasonable grounds for believing the same to be true and omitting from a tax return a sum which should be included. After trial, they were convicted of all their respective charges. D1 was fined a total sum of HK\$1.18 million. D2 was fined a total sum of HK\$0.98 million and sentenced to a total of 2 years' imprisonment. D3 was sentenced to 1 year's imprisonment in total.

HKSAR v Lee Sau-nog [2023] HKDC 843 is an anti-epidemic fund fraud case involving an application under the Retail Sector Subsidy Scheme for a subsidy of HK\$80,000 and seven applications under the Subsidy Scheme for Beauty Parlours, Massage Establishments and Party Rooms for a total sum of HK\$700,000 submitted by the defendant. Forged documents, including forged rental receipt and forged Towngas bill, forged electricity bills and forged MPF statements, were used in support of the respective applications. Upon discovering the frauds, the applications were rejected. The defendant pleaded guilty to one count of using copies of false instruments and seven counts of attempted fraud. The Court found the defendant's conduct to be calculated, unscrupulous and unrelenting and sentenced her to a total of 28 months' imprisonment.

所有控罪罪名成立。第一被告被罰款合共港幣 118 萬元；第二被告被罰款合共港幣 98 萬元及判監共兩年；第三被告則被判監共一年。

香港特別行政區 訴 李秀娥 [2023] HKDC 843 是一宗有關防疫抗疫基金的欺詐案，涉及被告在“零售業資助計劃”下所提交的一宗申請（資助金額為港幣 80,000 元），以及在“美容院、按摩院及派對房間資助計劃”下所提交的七宗申請（資助總額為港幣 700,000 元）。被告使用偽造文件（包括偽造的租金收據、煤氣費單、電費單及強積金報表），以證明相關申請。有關方面在發現欺詐行為後，拒絕批出該等申請。被告承認一項使用虛假文書的副本罪及七項企圖欺詐罪。法庭認為被告處心積慮、不擇手段及目無法紀，判監合共 28 個月。

分科四第 2A 組—廉政公署 / 公營機構

在香港特別行政區 訴 梁如娟 TMCC 1458/2023 案中，被告為前區議員助理，其職務包括協助合資格的本地機構申請使用由民政事務總署管理的社區會堂、社區中心及設施（該等設施）。被告收取某歌唱社成員的“利是”賄款，而該歌唱社並非可免費使用該等設施的合資格機構。被告承認五項代理人接受利益罪及三項欺詐罪，共被判囚四個月。法官另下令她須歸還港幣 2,500 元的涉案賄款，並須支付港幣 25,317 元，作為使用該等設施的補償。

在香港特別行政區 訴 龍少泉 [2023] HKCA 516 案中，曾擔任警司的被告為購入一個單位而 (a) 向政府申請購屋貸款計劃的貸款，以及 (b) 向一家本地銀行申請按揭貸款，合計港幣 500 萬元。被告在申請這兩筆貸款的過程中，訛稱該單位的空置管有權於交易完成日交付，並表示該單位為自用物業。然而，他在簽訂臨時買賣合約之前，已開始與該單位的現有租客商議簽訂新的租賃合約；而在該兩筆貸款發放前不久，他已與上述租客簽訂了新的租賃合約。被告被控兩項欺詐罪，經審訊後罪成被判囚 18 個月。他就定罪提出上訴許可申請，被上訴法庭駁回。

Section IV(2)A – ICAC (A) / Public Sector

In *HKSAR v Leung Yu-kuen* TMCC 1458/2023, the defendant, a former District Councillor assistant, whose duties included assisting eligible local organizations to apply for the use of community halls, community centres and facilities (“the Facilities”) managed by the Home Affairs Department, accepted laisees as bribes from a member of a singing club which was not an eligible organization to use the Facilities free of charge. The defendant pleaded guilty to five counts of agent accepting an advantage and three counts of fraud. She was sentenced to four months’ imprisonment in total. She was further ordered to repay HK\$2,500, being the bribes involved in the case, as restitution and to pay HK\$25,317, being the fees incurred, for using the Facilities as compensation.

In *HKSAR v Lung Siu-chuen* [2023] HKCA 516, the defendant, a former superintendent of the Police applied for (a) a loan from the Government under the Housing Loan Scheme and (b) a mortgage loan from a local bank totalling HK\$5 million for the purchase of a flat. In both loan applications, the defendant falsely represented that vacant possession of the flat would be delivered to him on the date of completion and that the flat would be for self-use. However, before signing the provisional sale and purchase agreement, he already embarked upon the negotiation of a fresh lease with the existing tenants of the flat; and shortly prior to the drawdown of the two loans, he already entered into a new lease with the said tenants. The defendant was charged and convicted after trial of two counts of fraud and sentenced to 18 months’ imprisonment. His application for leave to appeal against conviction was dismissed by the Court of Appeal.

In *HKSAR v Choi Ping-sun* ESCC 2181/2023, the defendant plead guilty to the common law offence of misconduct in public office. The defendant was an Assistant Officer II of the Correctional Services Department posted to Tai Tam Gap Correctional Institution. He was issued with a handheld device containing confidential information as to the inmates contained thereat. The defendant had allowed an inmate to operate the device so as to find out the location of another inmate in order to obtain a cigarette from him and to bring it back to the first mentioned inmate. The defendant was sentenced to 200 hours of community service order.

In *HKSAR v Tsim Sum-kit Ada* TMCC 1705/2022, the defendant was sentenced to life imprisonment and remanded in Siu Lam Psychiatric Centre (“Siu Lam”) upon her conviction in 2021 for a murder. While she was incarcerated in Siu Lam for assessment of

在香港特別行政區 訴 蔡炳榮 ESCC 2181/2023 案中，被告承認普通法中的公職人員行為失當罪。被告任職懲教署二級懲教助理，駐守大潭峽懲教所。他獲發一部電子手帳，內載有關於該懲教所內在囚人士的機密資料。被告容許一名在囚人士操作其電子手帳，尋找另一名在囚人士的位置以向他索取香煙，並把香煙帶回給首名提及的在囚人士。被告被判處 200 小時社會服務令。

在香港特別行政區 訴 詹心榮 TMCC 1705/2022 案中，被告在 2021 年因一宗謀殺案而被判處終身監禁，並還押小欖精神病治療中心（小欖）。她被囚於小欖以接受精神狀況評估期間，向一名管理其囚倉的懲教署高級懲教主任提出給予港幣 300,000 元，以協助她在入院令下繼續還押小欖，讓她可在數年內獲釋。被告經審訊後被裁定向訂明人員提供利益罪罪成，被判處監禁六個月。

在香港特別行政區 訴 黃志明 [2023] HKDC 1560 案中，身為警署警長的被告在未得行政長官一般或特別許可下，向警隊同袍索取及 / 或接受港幣 11,100 元至港幣 200,000 元不等的貸款。廉署接報後，被告要求其中一名債權人在接受廉署人員查問時隱瞞其借貸。此外，被告申請 (a) 在提早退休後再受僱於香港警務處及 (b) 香港警察儲蓄互助社的個人貸款時，也隱瞞其未償還的債務。他承認八項訂明人員索取或接受利益罪、兩項代理人意圖欺騙其主事人而使用文件罪，以及承認一項普通法中作出傾向並意圖妨礙司法公正的行為罪。他被判處監禁合共 22 個月。

在香港特別行政區 訴 鄭俊傑及另兩人 [2023] HKDC 890 案中，第一被告是香港郵政時任助理總經理，主管電子服務發展組。2016 年年中，第一被告負責就一個即將推出的項目的預算進行市場研究、草擬有關招標文件和監察執行情況。在市場研究階段，第一被告要求下屬聯繫其經營資訊科技公司的表姐（第三被告）以獲取預算成本，並邀請該公司出席簡介會。第三被告的公司隨後提交標書，並且中標。第一被告從未向香港郵政披露他與第三被告的親戚關係，違反香港郵政有關避免利益衝突的規定。根據招標要求，該項目的執行團隊必須由

her mental status, she offered HK\$300,000 to a Principal Officer of the Correctional Services Department and the person-in-charge of the ward she had been staying, to assist her to be further remanded in Siu Lam under a hospital order to enable her to be released from custody within a few years. The defendant was convicted after trial of the offence of offering an advantage to a prescribed officer and was sentenced to six months' imprisonment.

In *HKSAR v Wong Chi-ming* [2023] HKDC 1560, the defendant, a Police Station Sergeant, had solicited and/or accepted loans ranging from HK\$11,100 to HK\$200,000 from his Police colleagues, without the general or special permission of the Chief Executive. When the case was reported to the ICAC, the defendant requested one of his creditors to conceal the loans provided to him when being questioned by ICAC officers. The defendant also concealed his outstanding financial liabilities when he applied for (a) re-employment to the Hong Kong Police upon early retirement; and (b) a personal loan from the Hong Kong Police Credit Union. He pleaded guilty to eight counts of a prescribed officer soliciting or accepting an advantage and two counts of agents using a document with intent to deceive his principal and one count of the common law offence of doing an act tending and intended to pervert the course of public justice. He was sentenced to a total term of 22 months' imprisonment.

In *HKSAR v Cheng Chun-kit and 2 others* [2023] HKDC 890, D1 was the Assistant General Manager of the Hongkong Post ("HKP"), heading the e-Services Development Section. In mid-2016, D1 was responsible for conducting market research on the estimated budget, drafting of the tender documents and overseeing the implementation of a project to be launched. During the market research stage, D1 asked his subordinate to approach his cousin ("D3"), who ran an information technology company, to obtain an estimated cost and to invite the company to attend the briefing session. D3's company later submitted a tender to bid for the project and was selected. D1 never disclosed his family relationship with D3 to HKP in violation of HKP's requirement on avoidance of conflict of interest. It was a tender requirement that the implementation team of the project should consist certain qualified personnel but in the tender documents, D3 and her husband ("D2") falsely represented to HKP that their team was so qualified. D1 was charged with the common law offence of misconduct in public office and D2 and D3 were jointly charged with two counts of obtaining pecuniary advantage by deception. D1 was convicted after trial and was sentenced to six months' imprisonment, suspended for 18 months. D2 pleaded guilty to both counts and D3 pleaded guilty to one of the two counts (the other left on the Court file) and they were respectively sentenced to eight and six months' imprisonment, suspended for two years.

若干合資格人員組成，但第三被告及其丈夫（第二被告）在招標文件中向香港郵政虛報其團隊具備有關資格。第一被告被控干犯普通法中的公職人員行為失當罪，第二和第三被告則共同被控兩項以欺騙手段取得金錢利益罪。經審訊後，第一被告被裁定罪成，判處監禁六個月，緩刑 18 個月。第二被告承認兩項控罪，第三被告承認其中一項控罪（另一項控罪提交法庭存檔），他們分別被判處監禁八個月和六個月，緩刑兩年。

分科四第 2B 組一廉政公署 (B) / 私人機構

在香港特別行政區 訴 劉慧兒 [2023] HKDC 1049 案中，被告經審訊後被裁定普通法中的公職人員行為失當罪罪成。被告是一家律師事務所的事務律師及高級顧問，同時也是香港醫務委員會（醫委會）的業外委員。她濫用作為醫委會業外委員的權力，披露一名投訴人的個人資料和投訴詳情，並最終接受該投訴人的指示，代表他向一名醫生提出民事申索，而她清楚知道，如非以醫委會的官方身分獲取有關資訊，她根本無法爭取該投訴人成為她的委託人。投訴人已向被告的律師事務所支付港幣 45,000 元作為預付訟費，並被要求支付律師費餘額港幣 528,244.6 元。被告被判處監禁 30 個月。

在香港特別行政區 訴 劉靜雯及另兩人 [2023] HKDC 1265 案中，三名被告均為國泰航空機艙服務員。在國泰航空同行旅伴計劃下，每名僱員均可提名一名伴侶、兄弟姊妹、家人或朋友為其同行旅伴，獲提名者可憑優惠價購買國泰航空及其伙伴航空公司的機票。三名被告利用此計劃，分別收受旅伴約港幣 24,000 元、港幣 39,000 元及港幣 27,000 元的賄款。國泰航空明確禁止員工“出售”提名名額以換取報酬。第一被告承認三項串謀使代理人接受利益罪，判處監禁合共六個月。第一被告也在第二和第三被告的審訊中作證，兩人在審訊後各被裁定一項串謀使代理人接受利益罪罪名成立，判處監禁五個月。

Section IV(2)B – ICAC (B) / Private Sector

In *HKSAR v Lau Wai-yee Monita* [2023] HKDC 1049, the defendant was convicted after trial of the common law offence of misconduct in public office. She, being a solicitor and senior consultant of a solicitors' firm, was a lay member of the Medical Council of Hong Kong ("the Medical Council"). The defendant abused her power as a lay member of the Medical Council by disclosing the personal data of a complainant and the details of the complaint, and eventually accepting instructions from that complainant to act for him in a civil claim against a doctor, knowing full well she would not have been able to enlist that complainant as her client without access to the information in her official capacity of the Medical Council. The complainant had paid HK\$45,000 to the defendant's law firm as costs on account, and had been requested to pay the balance of legal fees of HK\$528,244.6. The defendant was sentenced to 30 months' imprisonment.

In *HKSAR v Lau Ching-man and 2 others* [2023] HKDC 1265, all three defendants were flight attendants of Cathay Pacific. Under Cathay Pacific's Companion Travel Scheme, each employee is allowed to nominate a partner, sibling, family member or friend to be a travelling companion who would be able to purchase air tickets of Cathay Pacific and its partner airlines at concessionary rates. Taking advantage of this scheme, the three defendants had accepted bribes of around HK\$24,000, HK\$39,000 and HK\$27,000 respectively from their travel companions. Cathay Pacific specifically prohibited its staff from "selling" their nominations for reward. D1 pleaded guilty to three charges of conspiracy for agent to accept advantage and was sentenced to an overall term of six months' imprisonment. D1 also testified in the trial of D2 and D3, each of whom was convicted after trial of one charge of conspiracy for agent to accept advantage and sentenced to five months' imprisonment.

The case of *HKSAR v Li Kin-wang and Woo Tak-hoi* [2023] HKDC 1519, involved offering of bribes to a director of the hotel group of Wynn in Macau ("Wynn"). D1 and D2 were respectively senior sales manager and director of two air-conditioning maintenance contractors. Acceding to the solicitation by a director of Wynn, D1 and D2 offered bribes with a view to securing more businesses from Wynn. The overall sum of bribes was over HK\$1 million. D1 pleaded guilty to two counts of conspiracy to offer advantage to an agent and three counts of offering advantage to an agent. He also testified for the Prosecution in D2's trial, who faced two counts of conspiracy to offer advantage to an agent. D2 was convicted after trial. D1 and D2 were sentenced to imprisonment for 18 months and two years respectively.

香港特別行政區 訴 李健宏及胡德海 [2023] HKDC 1519 案涉及向澳門永利酒店集團（永利）一名總監提供賄款。第一和第二被告分別是兩間冷氣工程維修承辦商的高級銷售經理和董事，二人應永利一名總監的索求向其提供賄款，以期從永利取得更多業務機會。賄款的總額逾港幣 100 萬元。第一被告承認兩項串謀向代理人提供利益罪及三項向代理人提供利益罪。他也在第二被告的審訊中為控方作證，第二被告被控兩項串謀向代理人提供利益罪。第二被告經審訊後被裁定罪名成立。第一和第二被告分別被判處監禁 18 個月和兩年。

在香港特別行政區 訴 趙嘉慧 WKCC 3625/2021 案中，被告是香港設計中心（設計中心）的前任經理。設計中心是公帑資助機構，負責推廣香港的創意及設計思維。於 2019 年 3 月至 2020 年 6 月期間，被告負責設計智識周及設計營商周的市場推廣及宣傳，兩個計劃均由公帑資助。被告在未有向設計中心妥善披露資料的情況下，推薦兩家由其丈夫掌管的公司為設計中心就四個市場推廣項目及一個網頁更新項目提供服務，合約總額約為港幣 39 萬元。被告經審訊後被裁定四項欺詐罪及一項企圖欺詐罪罪名成立，被判監 12 個月零一星期。

去年有多宗索取和接受利益案件涉及香港國際機場第三跑道項目（該項目）的建築地盤工人。例如，在香港特別行政區 訴 丁仕棠 WKCC 2814/2023 案中，被告經審訊後被裁定七項代理人接受或索取利益罪罪名成立。被告案發時在德鑄工程有限公司（德鑄）擔任工頭，德鑄為該項目的其中一個次承建商，負責為建築地盤招聘工人。被告曾多次向兩名工人索取每日港幣 150 元的賄款。涉案工人相信如不付款便會失去工作，因而屈從被告的要求。最終，被告從兩名工人收受合共約港幣 14,000 元。法庭在判處被告監禁八個月時作出以下觀察：“第三跑道項目是香港的重大工程，被告剝削建築業界新力軍，利用年輕一代求職心切的心態壓榨其以辛勞工作換來的報酬。被告的行為削弱社會的廉潔文化和公眾對平等就業機會的信心，必須判處阻嚇性的刑罰。”

In *HKSAR v Chiu Ka-wai* WKCC 3625/2021, the defendant was a former manager of the Hong Kong Design Centre (“HKDC”), a publicly-funded agency which promoted creative and design thinking in Hong Kong. During the period between March 2019 and June 2020, the defendant was responsible for the marketing and promotion of two programmes sponsored by public funds, namely Knowledge of Design Week and Business of Design Week. Failing to make proper disclosure to HKDC, the defendant recommended two companies controlled by her husband to provide services to HKDC in four marketing projects and one website revamp project. The overall contract sum was around HK\$390,000. The defendant was convicted after trial of four charges of fraud and one charge of attempted fraud. She was sentenced to imprisonment for 12 months and a week.

There were a number of cases of soliciting and accepting advantages involving workers at the construction sites of the 3rd Runway Project of the Hong Kong International Airport (“the Project”). For instance, in *HKSAR v Ting Shi-tong* WKCC 2814/2023, the defendant was convicted after trial of seven counts of agent accepting or soliciting advantage. The defendant was a team leader working for MLife Engineering Limited (“MEL”), one of the sub-contractors of the Project, responsible for recruiting workers for the construction sites. On various occasions, the defendant had solicited a daily bribe of HK\$150 from two workers. The workers, holding the belief that they would lose their jobs should they fail to pay, succumbed to the defendant’s request. As a result, the defendant had accepted the sum of about HK\$14,000 from those two workers. In sentencing the defendant to eight months’ imprisonment, the Court made this observation, namely “The 3rd Runway Project was a major project in Hong Kong. The defendant exploited the new blood in the construction industry and deprived them of their hard-earned money by taking advantage of the younger generation’s eagerness to find jobs. His acts had undermined the society’s probity culture and public confidence in equal employment opportunity, warranting a deterrent sentence.”



特別職務組及分科五 (科技罪行)

Special Duties Team and Sub-division V (Technology Crime)

特別職務組

特別職務組最初於 2020 年 4 月成立，負責處理自 2019 年 6 月以來因前所未有的社會動亂而引起的大量公眾秩序相關案件。該組從提供法律指引階段開始處理所有重大的公眾秩序事件相關的案件，並在各級法院就該等案件出庭檢控，直至最終結案為止。該組在 2023 年處理的一些重要案件摘要載述於下文。

上訴案件

在 2023 年，特別職務組成功處理了控方提出的多宗上訴，其中有些涉及重要的法律議題。以下是其中一些案件：

向終審法院提出的上訴

- (1) 香港特別行政區訴麥永華 (2023) 26 HKCFAR 282 案是就原訟法庭（作為上訴法院）推翻答辯人的“非法集結”定罪的決定提出的上訴。控方指法官裁定上訴得直是錯誤應用了終審法院在香港特別行政區訴盧建民 (2021) 24 HKCFAR 302 案的判決，該判決在香港特別行政區訴蔡健瑜 (2022) 25 HKCFAR 360 案中也曾被考慮。

終審法院一致裁定上訴得直，因此回復對答辯人作出的定罪裁決及刑罰。終審法院裁定上訴得直，並作出以下裁定：(i) 在對非法集結罪作出分析時，應先確辨出非法集結的存在，然後才處理被告有否參與該集結的問題；(ii) 在考慮該四名人士（包括答辯人）在梯級以鐳射筆和電筒作出照射的行為是否足以構成非法集結時，裁判官和法官錯誤地採取過於狹隘的處理方式；(iii) 正如法院於蔡健瑜案所解釋，成為該集結的一份子的意圖與參與該等集結人士個別行為的意圖，兩者之間是有差別的，而後者並非確立參與非法集結的必要元素；(iv) 正如裁判官所裁斷（而法官亦沒予以否定），答辯人的行為構成參與的行為，而其作出該等行為的意圖構成參與意圖。

Special Duties Team

The Special Duties (SD) Team was first set up in April 2020 to tackle the voluminous public order related cases that arose from the unprecedented social turmoil since June 2019. SD Team handled all of the significant public order event cases from the advisory stage and prosecuted them at different levels of Courts until their final disposal. A highlight of some notable cases handled by the SD Team in 2023 are set out below.

The Appeal cases

In 2023, SD Team has successfully taken out a considerable number of appeals by the Prosecution, some of which involved important legal issues. Some of these cases are set out below.

Appeal to the Court of Final Appeal

- (1) The case of *HKSAR v Mak Wing-wa* (2023) 26 HKCFAR 282 is an appeal against the decision of the Court of First Instance (acting as an appellate Court) to quash the respondent's conviction of "unlawful assembly". The Prosecution contended that the judge, in allowing the appeal, had misapplied the Court of Final Appeal (CFA)'s judgment in *HKSAR v Lo Kin-man* (2021) 24 HKCFAR 302 as considered in *HKSAR v Choy Kin-yue* (2022) 25 HKCFAR 360.

The CFA allowed the appeal unanimously, hence restoring the conviction and sentence of the respondent. In allowing the appeal, the CFA made the following rulings: (i) the proper approach to analyze an offence of unlawful assembly was to first identify the unlawful assembly, before addressing whether the defendant did take part in the assembly; (ii) by asking whether the four persons (including the respondent) involved in the shining of the laser pointer and torchlight at the staircase were sufficient to constitute an unlawful assembly, the magistrate and the judge erred by adopting too narrow an approach; (iii) as explained in the *Choy Kin-yue* case, an intention to become part of the assembly was different from an intention to take part in the individual acts of those assembled, and that the latter was not necessary to establish taking part in an unlawful assembly; (iv) the respondent's conduct, as found by the magistrate and from which the judge did not differ, constituted acts of participation and the intention to commit such conduct constituted participatory intent.

以案件呈述方式上訴

- (1) 香港特別行政區 訴 余德穎及另七人 [2023] HKCA 877 案是控方在第一至第八被告就2019年8月31日在灣仔發生的“暴動”被裁定罪名不成立後，以案件呈述方式提出的上訴。上訴法庭裁定針對第二至第五被告的上訴得直，撤銷他們的無罪裁決，下令把他們的案件發還區域法院由另一名法官重審。

上訴法庭裁定上訴得直，認為原審法官就第五被告無須答辯的裁定屬法律上犯錯且有悖常理，因為他錯誤地把考慮範圍局限於第五被告的行為是否屬於構成破壞社會安寧的行為，而沒有考慮她身處現場是否蓄意鼓勵他人參與暴動，從而與他人共同犯罪。原審法官在聆訊中段裁斷第五被告的言行並非“屬威嚇性、侮辱性或挑撥性的語言”，實屬言之過早，而且明顯有錯，因為這樣違反了在聆訊中段法官不應行使陪審團職能的原則。

此外，原審法官過分強調其他答辯人的實際和具體行為，而沒有充分考慮他們通過利便、協助或鼓勵其他暴動者的方式參與其中，並且在沒有證據的情況下作出各種有利於一眾答辯人的臆測，屬於明顯犯錯。

- (2) 在香港特別行政區 訴 李煒健 [2023] HKCFI 1723 案中，答辯人被截查時被發現帶着一把士巴拿和一支行山杖。他在警誡下聲稱士巴拿和行山杖是作自衛之用。原審裁判官裁定答辯人“管有攻擊性武器”罪名不成立。控方以案件呈述方式提出上訴後，法院裁定上訴得直，因為原審裁判官就被告無意傷害他人的裁定有悖常理。案件發還原審裁判官重新考慮。

覆核刑罰

- (1) 在律政司司長 訴 梁子揚及另四人 [2023] HKCA 1318 案中，一眾答辯人被控干犯“暴動”及其他罪行。他們承認在2019年11月18日參與逃離香港理工大學的暴

Appeal by way of case stated

- (1) The case of *HKSAR v Yu Tak-wing and 7 others* [2023] HKCA 877 is a case-stated appeal against the acquittals of D1-D8 of “riot” that took place in Wanchai on 31 August 2019. The Court of Appeal allowed the appeal against D2-D5 and their acquittals were quashed and their case was ordered to be remitted to the District Court for re-trial before another judge.

In allowing the appeal, the Court of Appeal held that the trial judge’s ruling of no case in respect of D5 was wrong in law and perverse as he wrongly limited his consideration to whether the acts of D5 were acts constituting a breach of the peace without considering whether, by her presence at the scene, she was intentionally encouraging others to take part in the riot, thereby jointly committing the offence with others. It was also premature and plainly wrong for the trial judge to determine at the half-time stage that D5’s words and conduct did not “fall under intimidating, insulting or provocative language” as this was in breach of the principle that, during half-time, a judge should not perform the function of the jury.

Further, the trial judge plainly erred in placing too much emphasis on the actual and specific conduct of other respondents without giving sufficient consideration to their participation by way of facilitating, assisting or encouraging other rioters, and in the absence of evidence, making various speculations in favour of the respondents.

- (2) In *HKSAR v Lee Wai-kin* [2023] HKCFI 1723, the respondent was intercepted and found with a spanner and a hiking stick. Under caution, he claimed that the spanner and hiking stick were for self-defence. The trial magistrate acquitted the respondent of the charge of “possession of offensive weapons”. Upon appeal by way of case stated, the Court allowed the Prosecution’s appeal as the trial magistrate’s ruling that the defendant had no intention to injure others was a perverse one. The case was remitted to the trial magistrate for reconsideration.

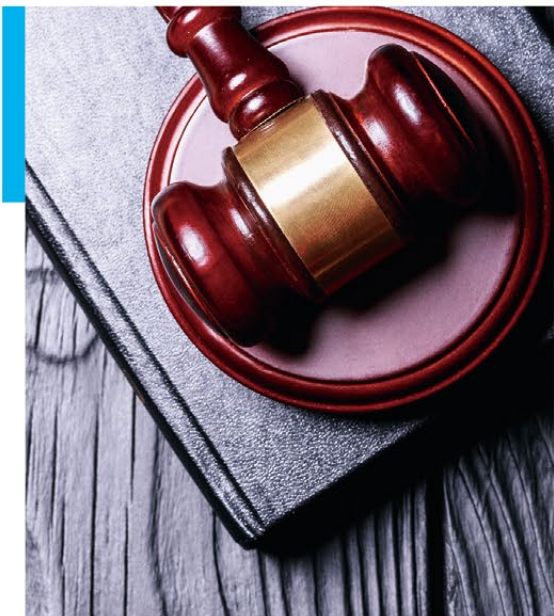
Review of sentence

- (1) In *Secretary for Justice v Leung Tsz-yeung Brian and 4 others* [2023] HKCA 1318, the respondents were charged with “riot” and other offences. They were convicted after their own pleas of participating in a riotous escape from the Hong Kong Polytechnic University on 18 November 2019. During the riot, protestors damaged property inside the university, set up barricades and checkpoints restraining other people’s

動，被裁定罪成。暴動期間，示威者破壞大學內的財產、設置路障和檢查站以限制他人進入大學、封鎖主要道路，並使用汽油彈和弓箭與警方對峙。一眾答辯人夥同其他人逃離大學，以汽油彈及雜物攻擊警方防線，其後逃至香港科學館被捕。原審法官以監禁兩年作“暴動”罪的量刑起點，考慮到一眾答辯人認罪和其個人背景，判處他們監禁 15 至 19 個月不等。

在律政司司長提出覆核刑罰申請後，上訴法庭裁定，法庭判刑時可以考慮大學暴動事件的整個案發背景。上訴法庭進一步裁定，鑑於本案性質嚴重，法庭的判刑原則上有錯並且明顯不足，恰當的量刑起點應不少於監禁三年。上訴法庭考慮到多項因素，包括各答辯人原本將刑滿出獄，因此行使酌情權不予改判。

- (2) 在律政司司長訴唐健邦及另二人 [2023] HKCA 896 案中，約 15 名示威者（包括一眾答辯人）在銅鑼灣聚集並襲擊一名路人約一分鐘，令該名路人大量出血。第一答辯人在原審法官裁定他須答辯後，承認“暴動”罪和“有意圖而傷人”罪，並被判罪成；第二及第三答辯人則在審訊前承認“非法集結”罪和“有意圖而傷人”罪，並被判罪成。各答辯人分別被判處監禁 34 個月、25 個月和 19 個月。



access to the university, blocked major roads and confronted the Police using petrol bombs and bows and arrows. The respondents, together with other people, escaped from the university, attacked the Police check line with petrol bombs and miscellaneous items, and subsequently fled into the Hong Kong Science Museum where they were arrested. The trial judge adopted a starting point of two years' imprisonment for the charge of "riot". Considering the respondents' guilty pleas and personal backgrounds, the trial judge sentenced them to imprisonment ranging from 15 months to 19 months.

Upon application for review of sentence, the Court of Appeal held that the Court is entitled to consider the entire context of the riot incident at the university in sentencing. The Court of Appeal further held that in view of the seriousness of the case, the sentences were wrong in principle and manifestly inadequate and that the appropriate starting point should be at least three years' imprisonment. Having considered various factors including that the respondents would complete their original sentence soon, the Court of Appeal exercised its discretion not to disturb the original sentence.

- (2) In *Secretary for Justice v Tong Kin-pong and 2 others* [2023] HKCA 896, around 15 protesters (including the respondents) gathered and attacked a passerby in Causeway Bay for about one minute, causing extensive bleeding. The 1st respondent was convicted of "riot" and "wounding with intent" upon his own pleas after the trial judge ruled that there was a case to answer, and the 2nd and 3rd respondents were convicted of "taking part in an unlawful assembly" and "wounding with intent" upon their own pleas before trial. The respondents were sentenced to imprisonment for 34 months, 25 months and 19 months respectively.

Upon application for review of sentence, the Court of Appeal held that in view of the seriousness of the attack and the involvement of the acts of private settlement, the starting points for the offences of "riot" and "wounding with intent" should be increased. The Court also considered that the sentencing discounts given by the trial judge concerning the respondents' clear records and low risk of re-offending were wrong in principle. The review application was allowed and the final sentences substituted on review for the respondents were 61, 42 and 37 months' imprisonment respectively.

- (3) In *Secretary for Justice v Cheung Tsz-lung* [2023] HKCA 614, the respondent together with a riotous mob attacked a taxi driver who sustained serious injuries. He pleaded guilty to a charge of "riot" and was sentenced to three years'

律政司司長提出覆核刑罰申請後，上訴法庭裁定鑑於涉案襲擊嚴重，而且涉及“私了”行為，因此應把“暴動”罪和“有意圖而傷人”罪的量刑起點上調。上訴法庭又認為，原審法官因各答辯人沒有定罪記錄和重犯機會低而扣減刑罰屬原則上有錯。上訴法庭批准該覆核申請，在覆核後最終改判各答辯人的刑期分別為監禁 61 個月、42 個月及 37 個月。

- (3) 在律政司司長訴張子龍 [2023] HKCA 614 案中，答辯人與一眾暴徒襲擊一名的士司機，司機傷勢嚴重。答辯人承認一項“暴動”罪，被判處監禁三年。律政司司長提出覆核刑罰申請後，上訴法庭認為判刑明顯不足、原則犯錯，又認為適當的量刑起點應為至少六年零六個月。由於答辯人認罪而獲三分之一扣減，另又因覆核申請再獲三個月扣減，故他最終被判處監禁四年零一個月。

上訴法庭審理的其他上訴

- (1) 在香港特別行政區訴方淦輝及另一人 [2023] HKCA 1303 案中，各申請人於 2019 年 11 月 18 日在油麻地參與暴動，經審訊後被裁定罪名成立。申請人就定罪申請上訴許可，理由是並無證據證明暴動期間他們在暴動區域內的行為或他們曾身在該處，而且案發現場有其他路人經過以及 / 或各申請人可能純粹是經過附近的路人。

上訴法庭考慮了相關證據、環境證據的疊加效應和力度，以及暴動和非法集結的流動性後，裁定各上訴理由毫無合理可爭辯之處，駁回就定罪提出的上訴許可申請。

- (2) 在香港特別行政區訴陳振銘 [2023] HKCA 1262 案中，申請人在名為“香港高登”的網上討論區發布一則帖文，文中列出製作硝酸甘油炸藥的方法，並指不排除可能會炸毀中國人民解放軍軍營。經審訊後他被裁定煽惑他人製造爆炸品罪名成立。申請人就定罪申請上訴許可，理由是原審法官錯誤地拒絕接納其證供並裁定他有所需的犯罪意圖。

imprisonment. Upon application for review of sentence, the Court of Appeal considered the sentence manifestly inadequate and wrong in principle. The Court considered the appropriate starting point should be at least six years and six months. Given the one-third discount for guilty plea and three-month discount for the review application, the respondent was eventually sentenced to four years and one month's imprisonment.

Other appeals at the Court of Appeal

- (1) In *HKSAR v Fong Kam-fai and another* [2023] HKCA 1303, the applicants were convicted after trial for participating in a riot in Yau Ma Tei on 18 November 2019. The applicants applied for leave to appeal against conviction on the grounds that there was no evidence to prove their acts or attendance in the riot area during the riot, there were other passers-by at the scene and/or the applicants could be mere passers-by in the vicinity.

Taking into account the evidence, the cumulative effect and the strength of circumstantial evidence and the fluidity of riot and unlawful assembly, the Court of Appeal held that none of the grounds of appeal were reasonably arguable and dismissed the applications for leave to appeal against conviction.

- (2) In *HKSAR v Chan Chun-ming* [2023] HKCA 1262, the applicant was convicted after trial of inciting others to commit the making of explosive substances by publishing a post on an online discussion forum named “HK Golden”, listing out the formula for making nitroglycerin explosives and stating that he would not rule out the possibility to bomb the barracks of the People's Liberation Army. The applicant applied for leave to appeal against conviction on the ground that the trial judge erroneously refused to accept his evidence and found that he had the requisite *mens rea*.

In dismissing the leave application, the Court of Appeal held that the trial judge had properly taken into account all the circumstantial evidence, including the applicant's explanation in his cautioned interviews, the title and contents of the post, etc., and held that none of the grounds of appeal were reasonably arguable.

- (3) In *HKSAR v Ching Wai-ming* [2023] HKCA 989, the applicant was convicted of “riot” in relation to the violent confrontation between two rival crowds in the Yuen Long MTR Station on 21 July 2019, during which a group dressed in white attacked others in the Yuen Long Station with rattan sticks and other

上訴法庭裁定原審法官已妥為考慮申請人在警誡會面中的解釋及帖文標題和內容等所有環境證據，並裁定上訴理由無一有合理可爭辯之處，駁回上訴許可申請。

- (3) 在香港特別行政區 訴 程偉明 [2023] HKCA 989 案中，兩批對立的羣眾於 2019 年 7 月 21 日在港鐵元朗站爆發暴力衝突，其間一羣身穿白衣的人士以籐條及其他武器襲擊站內其他人。申請人因涉案而被裁定“暴動”罪罪名成立，判監四年零三個月。申請人就定罪及判刑提出上訴，理由與辨認證供和證物的連鎖性等有關係。上訴法庭經考慮後，認為上訴理由無理據支持，拒絕批出就定罪及判刑的上訴許可，維持原來的定罪及判刑。
- (4) 在香港特別行政區 訴 伍文浩 [2023] HKCA 433 案中，申請人是 Telegram 頻道“SUCK Channel”的擁有人兼管理員，而曾有大量煽惑訊息被發佈於該頻道中。申請人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、刑事損壞和暴動等罪成。申請人就定罪提出上訴，理由與原審法官沒有考慮案中某些因素有關。上訴法庭在考慮相關證據後，裁定上訴理由無一有合理可爭辯之處，並駁回就定罪提出的上訴許可申請。
- (5) 在香港特別行政區 訴 劉智峰 [2023] HKCA 1231 案中，申請人經審訊後被裁定於 2019 年 10 月 1 日在黃大仙參與暴動罪成。申請人就定罪申請上訴許可，理由包括他因為擔任急救員所以在案發現場出現，而且沒有積極鼓勵犯罪。上訴法庭駁回他的申請。他繼而向上訴法庭申請許可上訴至終審法院，要求釐清就以鼓勵其他參與者作出受禁行為的方式參與暴動而言，法律是否要求在場從犯或二級主犯須積極鼓勵犯罪。

上訴法庭駁回其申請，裁定法律上並無有關“積極鼓勵”的要求。“積極”只是一個詞語，對香港特別行政區 訴 盧建民 (2021) 24 HKCFAR 302 案中“鼓勵”所作的詮釋不增添任何意義。

weapons. The applicant was sentenced to four years and three months' imprisonment. The applicant appealed against both conviction and sentence, on the grounds in relation to the identification evidence and chain of exhibits, etc. Upon consideration, the Court of Appeal found no merit on the grounds of appeal. Leave to appeal against conviction and sentence was refused and the conviction and sentence were upheld.

- (4) In *HKSAR v Ng Man-ho* [2023] HKCA 433, the applicant was the owner and administrator of a Telegram Channel named "SUCK Channel" in which a 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 and riot, etc. The applicant appealed against conviction on the grounds in relation to the trial judge's failure to consider certain factors in the case. Taking into account the evidence, the Court of Appeal held that none of the grounds of appeal advanced were reasonably arguable and dismissed the application for leave to appeal against conviction.
- (5) In *HKSAR v Lau Chi-fung* [2023] HKCA 1231, the applicant was convicted after trial of participating in a riot in Wong Tai Sin on 1 October 2019. His application for leave to appeal against conviction, on the grounds including that he attended the scene as a first aider and there was no active encouragement, was dismissed by the Court of Appeal. He further applied to the Court of Appeal for leave to appeal to the Court of Final Appeal for clarification on whether, for the purpose of taking part in a riot by way of encouraging the performance of the prohibited conduct by other participants, the law requires the accessory at the fact or the principal in the second degree to have active encouragement.

In dismissing the application, the Court of Appeal held that there was no requirement for "active encouragement". The word "active" was merely a term that added nothing to the interpretation of "encouragement" in the *HKSAR v Lo Kin-man* (2021) 24 HKCFAR 302 case.

Trials, plea and sentence

In 2023, Counsel of SD team have also prosecuted a large number of trials at all levels of Courts and attended the relevant plea and sentence hearings for public order related offences including riot, unlawful assembly and incitement behavior, etc. Among the cases handled by Counsel of SD team throughout the year, some of them attracted immense publicity. For example:

審訊、認罪和判刑

2023 年，特別職務組律師也在各級法院的大量審訊中出庭檢控，以及出席與公眾秩序相關罪行（包括暴動、非法集結和煽惑行為等）有關的認罪和判刑聆訊。年內，部分由特別職務組律師處理的案件獲廣泛報道。例如：

- (1) 2019 年 11 月 18 日，示威者在油麻地近香港理工大學（理大）一帶組織大型暴動以“圍魏救趙”，即分散警力以救出非法佔領理大的示威者。逾千名示威者在場集結，並向警方投擲汽油彈和照射雷射筆，又以木板、鐵板和水馬與警方對峙，導致附近主要道路的交通嚴重受阻。共 213 名被告被控“暴動”罪和其他罪行，他們被分拆為 17 宗案件處理。截至 2023 年 12 月 31 日，170 名被告（分佈於 15 宗案件中）在認罪或經審訊後被裁定“暴動”罪罪成，各被判入教導所或判監最長 64 個月（[2023] HKDC 123、[2023] HKDC 184、[2022] HKDC 475、[2023] HKDC 46、[2023] HKDC 1485、[2022] HKDC 1207、[2023] HKDC 487、[2023] HKDC 367、[2023] HKDC 319、[2023] HKDC 658、[2023] HKDC 1266、[2023] HKDC 1035、[2023] HKDC 1005、[2023] HKDC 414、[2023] HKDC 916、[2023] HKDC 915、[2023] HKDC 914、[2023] HKDC 992、[2023] HKDC 1272、[2023] HKDC 1741、[2023] HKDC 410、[2023] HKDC 881 及 [2023] HKDC 1046）。其餘兩宗案件預定於 2024 年完成審訊。
- (2) 在香港特別行政區 訴 袁展翔 [2023] HKDC 1424 案中，2020 年 5 月 24 日銅鑼灣發生暴動，其間暴動者叫喊口號，高舉香港殖民時期旗幟和美國國旗，並向警方投擲玻璃樽、磚塊和雨傘。被告向正在後退的警方防線投擲磚塊，然後逃離現場。他承認“暴動”罪，被裁定罪名成立。法院認為該罪行情節嚴重，判處被告監禁三年。
- (3) 在香港特別行政區 訴 馮嘉文及另 11 人 [2023] HKDC 419 案中，2019 年 9 月 29 日

- (1) On 18 November 2019, a mass riot took place in Yau Ma Tei near the Polytechnic University which was organized by protestors to “Besiege Wei to Rescue Zhao” (圍魏救趙), i.e. to distract the Police so as to save those protestors unlawfully occupying the said university. More than a thousand protestors assembled, threw petrol bombs and shone laser pens towards the Police, confronted the Police using wooden boards, iron plates and water-filled barriers and caused serious disruption to the traffic on major roads nearby. A total of 213 defendants were charged with “riot” and other offences, who were split into 17 cases. As of 31 December 2023, 170 defendants (in 15 cases) were convicted of “riot” either on their own pleas or after trial. They were sentenced to training centre or to imprisonment ranging up to 64 months ([2023] HKDC 123, [2023] HKDC 184, [2022] HKDC 475, [2023] HKDC 46, [2023] HKDC 1485, [2022] HKDC 1207, [2023] HKDC 487, [2023] HKDC 367, [2023] HKDC 319, [2023] HKDC 658, [2023] HKDC 1266, [2023] HKDC 1035, [2023] HKDC 1005, [2023] HKDC 414, [2023] HKDC 916, [2023] HKDC 915, [2023] HKDC 914, [2023] HKDC 992, [2023] HKDC 1272, [2023] HKDC 1741, [2023] HKDC 410, [2023] HKDC 881 and [2023] HKDC 1046). The remaining two trials are scheduled to complete in 2024.
- (2) In *HKSAR v Yuen Chin-cheung* [2023] HKDC 1424, a riot happened in Causeway Bay on 24 May 2020, in which rioters shouted slogans, raised Hong Kong flags of the colonial era and the US flags and threw glass bottles, bricks and umbrellas at the Police. The defendant threw a brick at the Police check line which was retreating and ran away from the scene. The defendant was convicted of “riot” upon his own plea. The Court considered that the circumstances of the offence were serious and sentenced the defendant to three years’ imprisonment.



金鐘政府總部外一帶發生暴動，其間示威者以雨傘作掩護，向警方投擲硬物和汽油彈、在道路上縱火，並使用巨型橡筋作投射器向政府總部彈射硬物。在 12 名被控“暴動”罪的被告中，10 人認罪後被裁定罪名成立，兩人經審訊後被定罪，各被判監最長五年零三個月。

- (4) 在香港特別行政區 訴 葉倩敏 [2023] HKDC 768 案中，一名中國籍男子於 2021 年 7 月 1 日在崇光百貨外襲擊一名警員後自殺。案發翌日，被告在 Telegram、Facebook 和 Instagram 發布帖文，煽惑他人罔顧香港法紀，使用槍械和作出其他違法行為，包括導致警員身體受嚴重傷害。被告認罪後被裁定“煽惑他人有意圖而導致他人身體受嚴重傷害”罪成，被判監 10 個月。

- (5) 在香港特別行政區 訴 李茵茵 [2023] HKDC 1703 案中，一名路人及其友人在元朗被一羣為數約 30 人的示威者（包括被告）揮拳並以雨傘、棒狀物及硬物襲擊，因而身受重傷。被告有分參與擊打該名路人的背部，又用易拉架攻擊其頭部。在警員到訪被告的住所時，她把門鎖上並把參與暴動時所穿的一雙鞋子扔出窗外。

被告被控兩項“有意圖而傷人”罪、一項“暴動”罪及一項“妨礙司法公正”罪，經審訊後被裁定全部罪名成立，共被判監五年零六個月。

- (6) 在香港特別行政區 訴 黃家豪及另外 12 人 DCCC 606-610 & 1069/2020 & 259/2021 案及香港特別行政區 訴 鄒家成 DCCC 1124/2022 案中，共 14 名被告就於或約於 2019 年 7 月 1 日立法會綜合大樓發生的衝擊事件被控多項罪名，包括“暴動”罪和“違反行政指令”罪。案發當日，示威者包圍立法會綜合大樓，其後將暴力升級，以鋼枝、鐵製手推車和槌子等打碎大樓的玻璃外牆。數百名示威者隨後強行闖進大樓，並衝入會議廳及大樓內其他地方。結果，立法會綜合大樓遭大肆破壞和嚴重損毀。在 14 名被告中，八人承認“暴動”罪，另外六名被告（其中兩人承認部分控罪）的審訊亦已結束。

- (3) In *HKSAR v Fung Ka-man and 11 others* [2023] HKDC 419, a riot took place in the area outside the Central Government Offices in Admiralty on 29 September 2019, during which protestors covered themselves using umbrellas, threw hard objects and petrol bombs at the Police, set fires on the road and used giant rubber bands as launchers to launch hard objects at the Central Government Offices. Among the 12 defendants who were charged with “riot”, 10 of them were convicted upon their own pleas and two of them were convicted after trial. The defendants were sentenced to imprisonment ranging up to five years and three months.

- (4) In *HKSAR v Yip Sin-man* [2023] HKDC 768, a Chinese male attacked a police officer outside the SOGO Department Store on 1 July 2021 and committed suicide afterwards. On the following day, the defendant made posts on Telegram, Facebook and Instagram to incite others to, *inter alia*, use guns against the law and order of Hong Kong, including causing grievous bodily harm to Police officers. The defendant was convicted of “incitement to cause grievous bodily harm with intent” upon her own plea. She was sentenced to 10 months’ imprisonment.

- (5) In *HKSAR v Lee Yan-yan* [2023] HKDC 1703, a passerby and his friend were attacked by a group of around 30 protestors (including the defendant) in fists, umbrellas, and rod-shaped and hard objects in Yuen Long, therefore suffering serious injuries. The defendant has also hit the passerby’s back and used a roll-up banner to attack his head. When Police officers visited the defendant’s residence, she locked the door and threw a pair of shoes (which she wore during the riot) out of the window.

The defendant was charged with two counts of “wounding with intent”, one count of “riot” and one count of “perverting the course of public justice”. After the trial, the defendant was convicted of all the charges and was sentenced to a total of five years and six months’ imprisonment.

- (6) In *HKSAR v Wong Ka-ho and 12 others* DCCC 606-610 & 1069/2020 & 259/2021 and *HKSAR v Chow Ka-shing* DCCC 1124/2022, a total of 14 defendants have been charged with various offences including “riot” and “contravening administrative instruction” in relation to the storming of the Legislative Council Complex on about 1 July 2019. On the day, protestors surrounded the Legislative Council Complex, then escalated the violence by smashing the glass panels of the building with steel poles, metal trolleys and hammers, etc. Subsequently, hundreds of protestors forced their way into the building, and broke into the main chamber and

分科五 (科技罪行)

近年，借助或依賴互聯網的精密電腦網絡罪案在本港急增，對個別人士造成巨大傷害和損失，也為整體社會的安全和保安帶來嚴峻挑戰。分科五 (科技罪行) 在 2023 年 7 月成立，以打擊複雜的高科技罪行，尤其是涉及發展瞬息萬變的加密貨幣、非同質化代幣、暗網和元宇宙等專門範疇的罪行。本分科亦負責處理導致或可能導致本司法管轄區受到嚴重傷害的集團式或大規模科技罪行。

三名首長級人員和九名高級檢控官及檢控官調派至本分科，負責提供法律指引、代表檢控方處理審訊和上訴聆訊，以及出席各類相關聆訊。本分科不但旨在透過提供法律指引和進行檢控工作以迅速有效地打擊高科技罪行，還致力檢討現行刑事法律的實質內容和域外效力是否足夠，並透過參與香港法律改革委員會的工作提出制定新法例的建議，把與電腦網絡相關的不當行為訂為刑事罪行，從而協助制定全面的法律框架，更有效打擊科技罪行。

本分科自成立以來，成員在多個研討會及會議中與電腦網絡和法證專家，以及警方網絡安全及科技罪案調查科緊密合作，務求緊貼上述專門範疇出現的空前變化，以及掌握犯罪活動的趨勢和模式。展望未來，本分科的目標是培訓警務人員中的專家證人和檢控人員，以更有效進行高科技罪行的調查和檢控工作。本分科會繼續推動各持份者之間的合作，盡一切可能打擊高科技罪行。

other parts of the building. As a result, the Legislative Council Complex was extensively vandalized and severely damaged. Among the 14 defendants, eight of them pleaded guilty to "riot". The trial of the six other defendants (two of whom made partial guilty pleas), has also concluded.

Sub-division V (Technology Crime)

In recent years, there has been a sharp increase in sophisticated internet-enabled or internet-dependent cybercrimes in Hong Kong, causing significant harm and loss to the individuals; and posing huge challenges to the safety and security of the society as a whole. In July 2023, Sub-division V (Technology Crime) was set up to combat complex high-tech crimes, particularly cases involving Cryptocurrencies, Non-Fungible Tokens, the dark web, the Metaverse and the like which are all specialized areas under rapid development and changes. This Sub-division also handles tech-crimes involving syndicates or of large-scale operations which cause or may cause serious harm to this jurisdiction.

Three directorate officers and nine Senior Public Prosecutors and Public Prosecutors have been deployed to the Sub-division, who are responsible for providing legal advice, prosecuting trials and appeals and attending different types of related hearings. This Sub-division aims not only to promptly and effectively combat high-tech crimes through the provision of legal advice and prosecution services, but also assist in establishing a comprehensive legal framework with a view to more effectively fighting technology crimes, by reviewing the adequacy of existing criminal law, in terms of both the substance and the extraterritorial effect, and by proposing for enactment of new laws to criminalize cyber-related misconduct through participation at the Law Reform Commission of Hong Kong.

Since the inception, members of this Sub-division have worked closely with cyber and forensic experts in seminars and conferences; and the Police's Cyber Security and Technology Crime Bureau to keep pace with the unprecedented changes in these specialized areas, as well as the trends and patterns of criminal activities. Moving on, this Sub-division aims to train up expert witnesses from the Police and prosecutors, so as to more effectively investigate and prosecute high-tech crimes. The Sub-division will continue to promote cooperation between stakeholders to combat high-tech crimes in all ways possible.



外展及培訓 Outreach and Training

持續法律進修課程

一如往年，本科在 2023 年舉辦了多個研討會和交流會，由來自檢控相關界別的資深講者主講，當中包括：

- “從調查、法律指引至審訊籌備：起底案件檢控工作” — 在 1 月 6 日舉辦，由高級檢控官林曉敏女士及署理高級檢控官歐陽巽熙先生主講
- “情繫基本法律 — 實戰摘記” — 在 3 月 3 日舉辦，由布思義資深大律師主講
- “理解精神上無行為能力人士的證供” — 在 3 月 24 日舉辦，由警務處警察臨床心理學家馮浩堅先生主講
- “檢控和調查公眾活動罪行” — 在 4 月 21 日舉辦，由署理助理刑事檢控專員張卓勤先生主講
- “想知而不敢問的上訴訟辯事宜” — 在 4 月 28 日舉辦，由高等法院上訴法庭法官薛偉成先生主講



- “提訊和審訊籌備” — 在 9 月 28 日舉辦，由高級助理刑事檢控專員黃堅邦先生、高級檢控官林曉敏女士及署理高級檢控官歐陽巽熙先生主講

Continuing Legal Education

As in previous years, seminars and sharing sessions were conducted by experienced guest speakers from sectors related to prosecution in 2023. Such seminars and sharing sessions included:

- “Prosecuting doxxing cases: from investigation, advice to trial preparation”, by Ms Human Lam, Senior Public Prosecutor and Mr Dimitri Au-yeung, Acting Senior Public Prosecutor on 6 January



- “My love affair with the basic law - notes from the trenches”, by Mr Andrew Bruce, SC on 3 March
- “Understanding the testimony of mentally incapacitated person witnesses”, by Mr Michael Fung, Clinical Psychologist of the Police on 24 March
- “Prosecution and investigation of public order event offences”, by Mr Ivan Cheung, Acting Assistant Director of Public Prosecutions on 21 April
- “Everything you wanted to know about appellate advocacy but were afraid to ask”, by Mr Justice Zervos, Justice of Appeal of the Court of Appeal of the High Court on 28 April
- “Plea day and trial preparation”, by Mr Michael Wong, Senior Assistant Director of Public Prosecutions, Ms Human Lam, Senior Public Prosecutor and Mr Dimitri Au-yeung, Acting Senior Public Prosecutor on 28 September

Attachment Programme

In 2023, a number of Mainland China officials from various institutions were attached to the Prosecutions Division in 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:

實習計劃

在 2023 年，多名中國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：

- 東莞監獄陳道君先生 (5 月 15 至 19 日)
- 山西省司法廳苗俊豪先生 (6 月 5 至 9 日)
- 山東省司法廳方偉超先生 (6 月 5 至 9 日)
- 沈陽市皇姑區人民檢察院張瑾毅女士 (6 月 26 至 30 日)

練習計劃

自 2020 年起，獲認許後執業少於五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，並以收取每日定額酬金的方式在合適的外判案件中協助進行檢控工作。這項計劃為資歷較淺的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 2023 年，共有 17 名私人執業的新晉大律師參與這項計劃。

刑事訟辯課程

我們在 2023 年為新入職的檢控官和見習律政人員舉辦了兩輪刑事訟辯課程。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，其間執行刑事案件的檢控工作。

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。

- Mr Chen Xiaojun, from the Dongguan Prison (15-19 May)
- Mr Miao Junhao, from the Department of Justice of Shanxi Province (5-9 June)
- Mr Fang Weichao, from the Department of Justice of Shandong Province (5-9 June)
- Ms Zhang Jinyi, from the People's Procuratorate of Huanggu District of Shenyang (26-30 June)

Understudy Programme

Since 2020, barristers and solicitors in private practice with less than five 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 has provided valuable learning opportunities to junior counsel for gaining experience and skills in prosecuting cases of complexity and sensitivity. A total of 17 junior counsel in private practice participated in the programme in 2023.

Criminal Advocacy Course



In 2023, 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.

部門檢控人員培訓課程

刑事檢控科於 2023 年 5 月為來自政府各決策局／部門及自主機構的非法律專業檢控人員舉辦了為期 14 天的部門檢控人員培訓課程。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，體驗在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。

國際會議

在 2023 年，本科繼續加強與其他司法管轄區的檢控人員的聯繫。我們參與多項國際活動，從中掌握刑事法律和檢控方面的最新發展，同時也與其他司法管轄區的同業交流意見。這些國際活動包括：

- 2023 年 4 月舉行的財務行動特別組織政策發展小組間會（法國巴黎）
- 2023 年 6 月舉行的財務行動特別組織全體及工作小組會議（法國巴黎）
- 2023 年 9 月舉行的財務行動特別組織政策發展小組間會（法國巴黎）



Departmental Prosecutors Training Course

The Prosecutions Division organised a 14-day Departmental Prosecutors Training Course in May 2023 for lay prosecutors from different government bureaux / departments and autonomous bodies. The course aimed to equip departmental prosecutors with the knowledge and skills necessary for their discharge of duties.

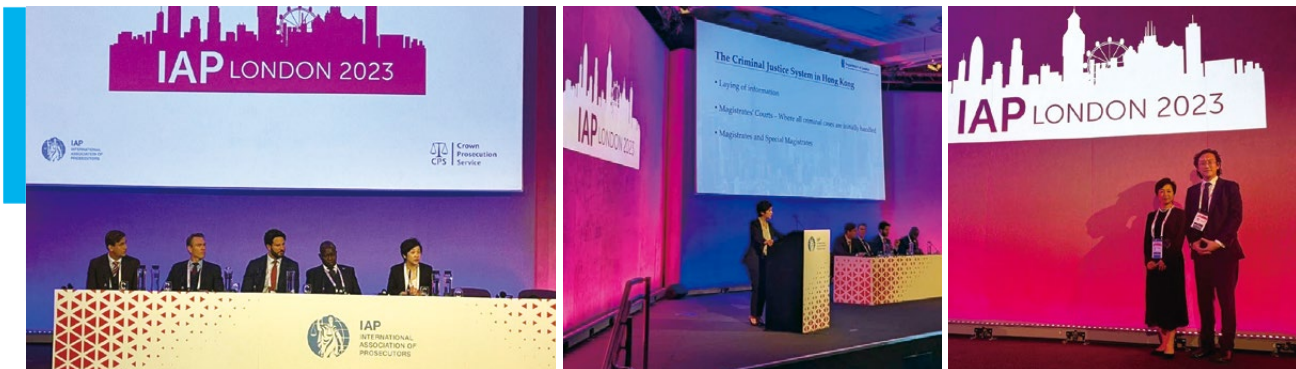


The course consisted of three parts. Participants first had to attend a series of lectures covering topics such as Magistrates' Courts procedures, examination of witnesses, previous consistent / inconsistent statement, *voir dire* and disposal of exhibits. They then paid a one-day visit to one of the 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.

International Conferences

In 2023, we continued to foster links with counterparts in other jurisdictions. We participated in various international events, in which we kept abreast of the latest developments in criminal law and prosecutions and exchanged ideas with our counterparts. Such international events included:

- The Financial Action Task Force Policy Development Group Intersessional Meeting April 2023 (Paris, France)
- The Financial Action Task Force Plenary and Working Group meetings June 2023 (Paris, France)
- The Financial Action Task Force Policy Development Group Intersessional Meeting September 2023 (Paris, France)



- 第 28 屆國際檢察官協會年會暨會員代表大會（英國倫敦）
- 第二屆財務行動特別組織與國際刑警組織圓桌會議（法國里昂）
- 2023 年 10 月舉行的財務行動特別組織全體及工作小組會議（法國巴黎）
- 第七屆野生生物區域間執法會議（阿拉伯聯合酋長國阿布扎比）
- 第 13 屆東盟成員國與中國總檢察長會議（越南河內）
- The 28th International Association of Prosecutors Annual Conference and General Meeting (London, United Kingdom)
- The Financial Action Task Force – International Criminal Police Organization Roundtable Engagement II (Lyon, France)
- The Financial Action Task Force Plenary and Working Group meetings October 2023 (Paris, France)
- The 7th Wildlife Inter-Regional Enforcement Meeting (Abu Dhabi, United Arab Emirates)
- The 13th ASEAN-China Prosecutors – General Conference (Hanoi, Vietnam)



培訓課程

在 2023 年，本科檢控官參加了多項不同類型的培訓課程，藉以增進知識和磨練技巧，使他們能夠更有效地履行檢控職務並為事業發展打好基礎。這些培訓課程包括：

- 倫敦中殿大律師學院訟辯培訓課程（英國倫敦）
- 在英國牛津大學基布爾學院舉辦的 South Eastern Circuit Bar Mess Foundation 2023 年高級國際訟辯課程（英國牛津）
- 公務員事務局舉辦的國家事務研習課程（中國南京）
- 中央人民政府聯絡辦公室舉辦的內地法律制度研習班（中國北京）

Training Activities

In 2023, our prosecutors attended a wide range of training activities to hone their knowledge and skills necessary for a more efficient discharge of their duties and for future career advancement. These courses included:

- Middle Temple Advocacy Training Course (London, United Kingdom)
- The South Eastern Circuit Bar Mess Foundation Advanced International Advocacy Course 2023 at Keble College, Oxford (Oxford, United Kingdom)
- National Studies Course organised by the Civil Service Bureau (Nanjing, China)
- Mainland Legal Studies Course organised by the Liaison Office of the Central People's Government (Beijing, China)



統計數字 Statistics

服務表現的標準及目標

在 2023 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 15,486 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，95.3% 符合本科的服務承諾，即在 14 個工作天內作出回覆，而 2022 年則是 89.5%。

工作量

審訊籌備及提供法律指引的工作

本科在 2023 年提供法律指引的次數較 2022 年增加 6.0%。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 2023, in addition to court work, the Division gave a total of 15,486 legal advice on criminal matters to government bureaux and law enforcement agencies. Of all the requests for legal advice, 95.3% were replied to within 14 working days in accordance with our performance pledge, as compared to 89.5% in 2022.

Caseload

Trial preparation and advisory work

The number of legal advice given in 2023 increased by 6.0% as compared to 2022. 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.

	2022	2023
提供法律指引次數 <i>Number of legal advice given</i>	14,610	15,486
籌備由原訟法庭審理的案件數目 <i>Number of cases prepared for the Court of First Instance</i>	223	446
籌備由區域法院審理的案件數目 <i>Number of cases prepared for the District Court</i>	1,170	1,311

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

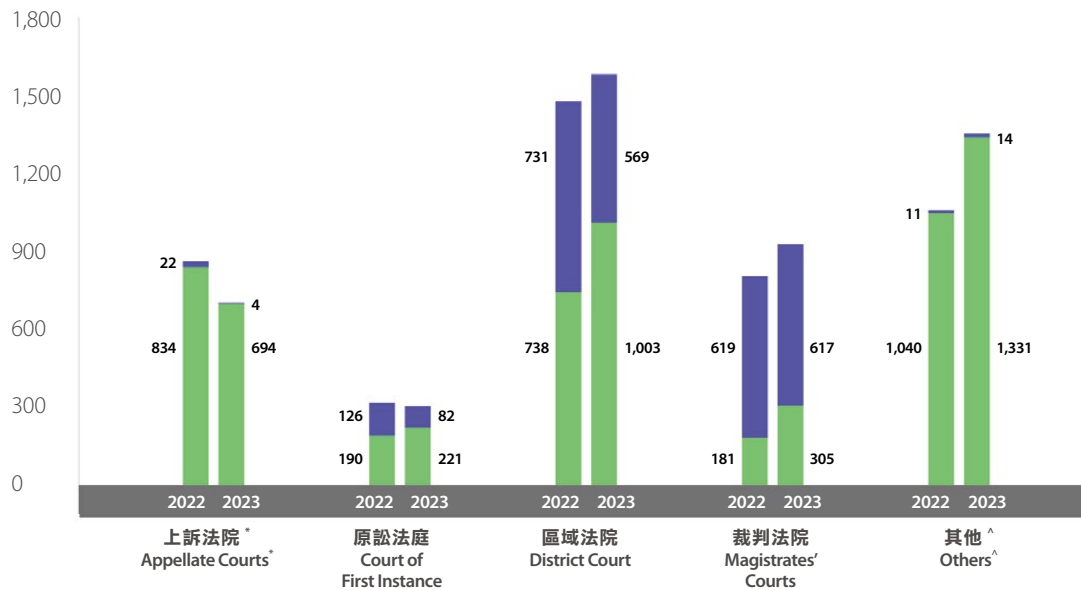
年內處理的案件總數錄得上升。與 2022 年相比，由本科檢控人員處理的案件數目上升 19.1%，由外判律師處理的案件數目則下跌 14.8%。

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

There was an increase in the total number of cases conducted for the year. As compared to 2022, the number of cases conducted by in-house prosecutors increased by 19.1% while the number of cases conducted by fiat counsel decreased by 14.8%.

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, taxations of costs and High Court miscellaneous proceedings.

**外判律師
Fiat Counsel**
2022
總數 Total: **1,509**
2023
總數 Total: **1,286**

**本科檢控人員
In-house Prosecutors**
2022
總數 Total: **2,983**
2023
總數 Total: **3,554**

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

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

	2022	2023
	134,756	143,824

案件的結果

定罪率

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*。

Case Outcomes

Conviction rates

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					
2022	861	1,376	1,170	54.0%	65.7%
2023	1,101	2,079	1,348	60.7%	70.2%
區域法院 District Court					
2022	784	298	80	78.8%	93.1%
2023	1,123	289	73	79.8%	95.1%
原訟法庭 Court of First Instance					
2022	173	45	38	54.2%	85.2%
2023	197	43	34	55.8%	87.6%

* 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	
	2022	2023	2022	2023
向上訴法庭或原訟法庭申請證明書以上訴至終審法院： Application for certificate in the Court of Appeal or the Court of First Instance for appeal to the Court of Final Appeal:				
得直 Allowed	3	4	0	1
駁回 Dismissed	24	14	1	0
撤銷 Withdrawn	1	0	1	0
待決 ^註 Pending ^{Note}	2	3	1	0
總數 Total	30	21	3	1
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	1	10	4	3
駁回 Dismissed	22	30	0	0
撤銷 Withdrawn	1	2	1	0
待決 ^註 Pending ^{Note}	36	26	1	1
總數 Total	60	68	6	4
向終審法院提出的上訴： Appeal to the Court of Final Appeal:				
得直 Allowed	2	3	2	3
駁回 Dismissed	0	5	0	2
撤銷 Withdrawn	0	0	0	0
待決 ^註 Pending ^{Note}	0	2	2	1
總數 Total	2	10	4	6

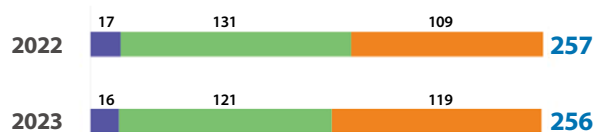
註一 指於該年提出但尚未完成處理的申請數目。

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

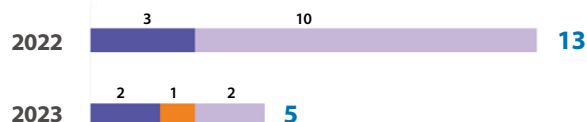
上訴法庭

Court of Appeal

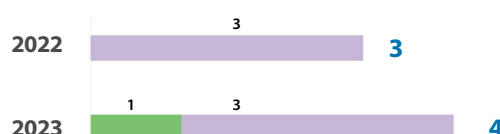
被告提出的上訴
By Defendants



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



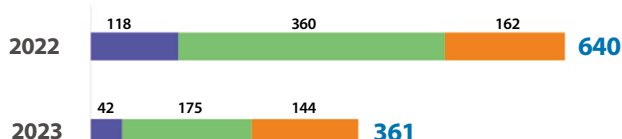
刑事檢控科以案件呈述方式提出的上訴
By Prosecutions Division by way of case stated



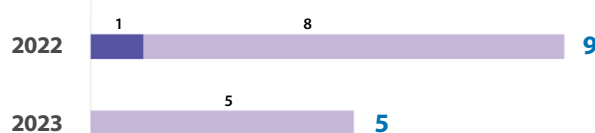
原訟法庭

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。

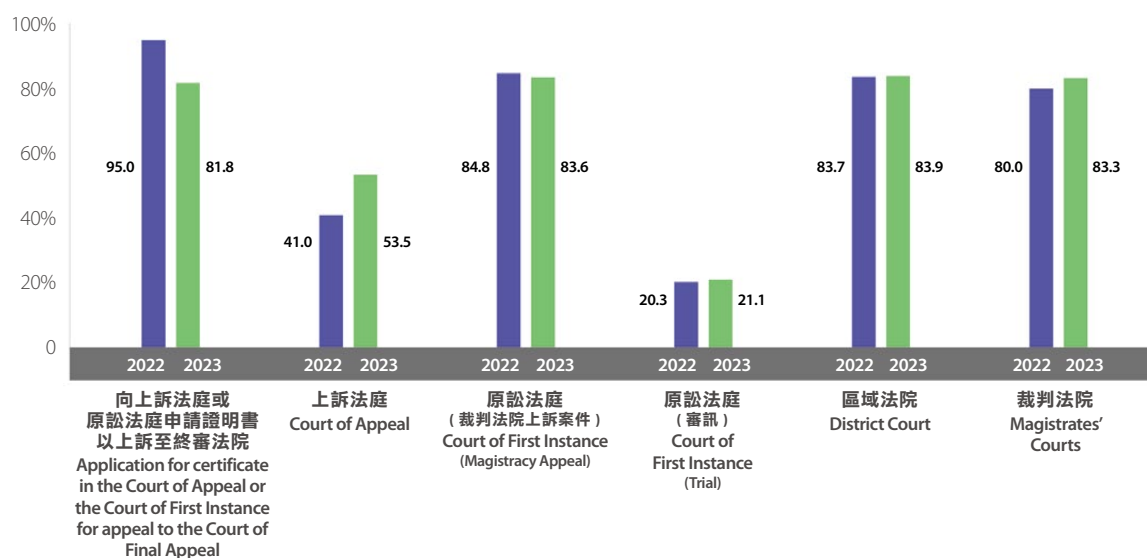
Note – This refers to the number of applications initiated and had not yet been concluded in the respective year.

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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