



## 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.