



## 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”的精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.