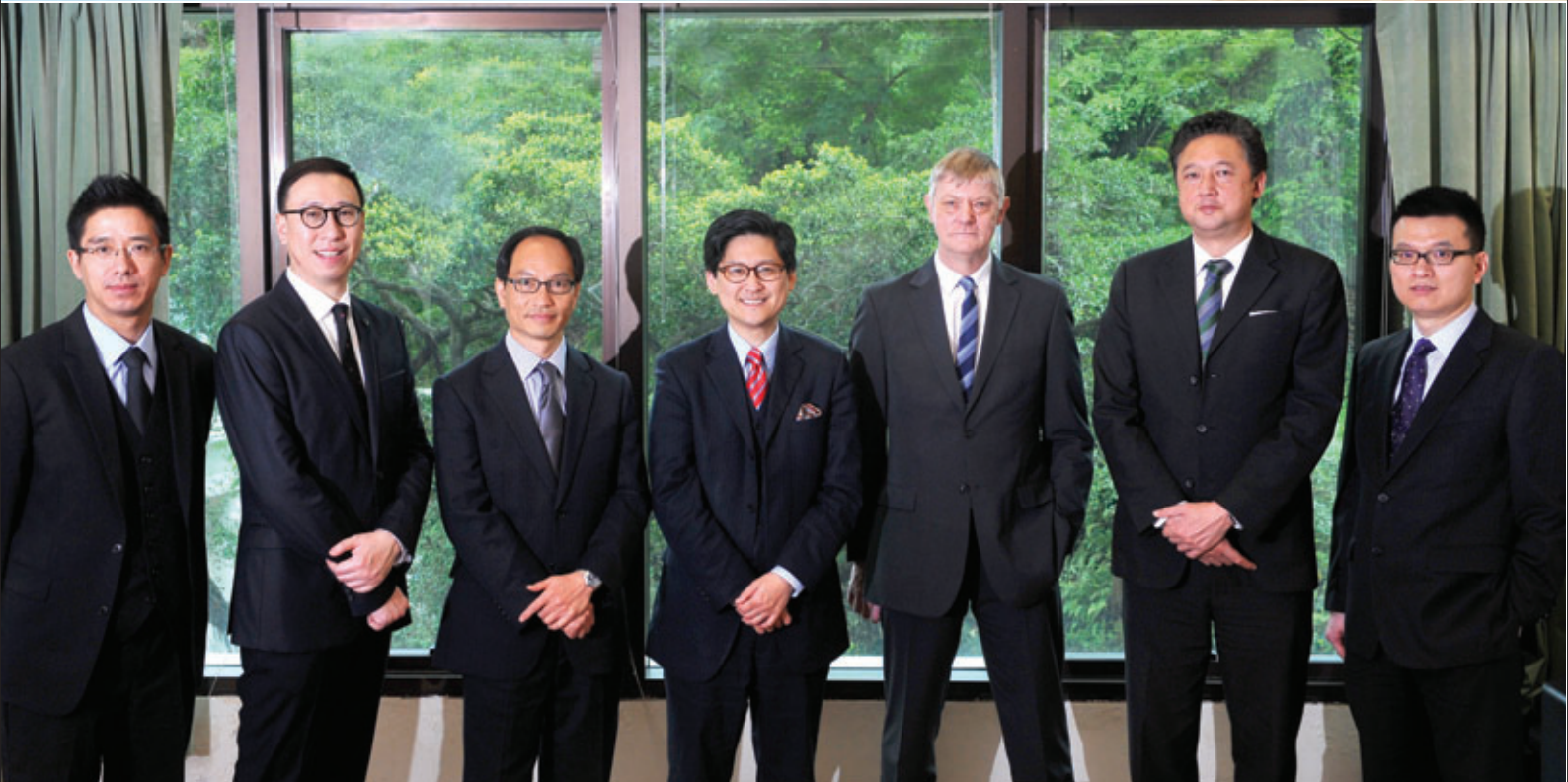


# 分科一 法律指引

## Sub-division I Advisory



分科一主要負責就是否提出檢控這個重要問題，向執法機關提供法律指引。檢控決定會影響人們的生活，有見及此，只有在律師認為有充分的證據，以及檢控符合公眾利益的情況下，當局才會進行檢控。分科內的律師亦會就刑事法律事宜提供指引。

### 分科一第 1 組 — 原訟法庭法律指引

本組由鮑偉華先生掌管，職責是就所有由高等法院原訟法庭審理的案件（商業罪案除外），向執法機關提供法律指引。這包括只可在原訟法庭審理的案件（例如殺人），以及根據檢控指引建議交付原訟法庭司法管轄權範圍審理的案件。在選擇審訊應在哪一級別的法院進行，其中一個必須考慮的因素，是根據現行的判刑指引，有關罪行的刑罰是否相當有機會超過 7 年監禁（區域法院的判刑上限）。

Sub-division I is primarily responsible for advising law enforcement agencies on the important question of whether or not to prosecute. A decision to prosecute affects people's lives. With this in mind, prosecutions only take place if counsel consider that there is sufficient evidence to prosecute and that it is in the public interest to do so. Counsel of the sub-division are also consulted on issues concerning the operation of the criminal law.

### Section I (1) – Court of First Instance Advisory

The Section, headed by Mr Peter Power, gave advice to law enforcement agencies on all matters that were to be dealt with in the Court of First Instance, except commercial crime. These included cases, such as homicide, which could only lawfully be tried in that jurisdiction, and cases that were recommended to be tried in that jurisdiction according to prosecution guidelines. In determining the venue for

trial, one of the factors that is always taken into account is whether, having regard to current sentencing guidelines, the sentence of an offence would be likely to exceed seven years' imprisonment (the sentencing limit of the District Court).

The Section provided accurate and timely legal advice to law enforcement agencies. Files submitted for advice were allocated to counsel who advised on the sufficiency of the evidence and the appropriate charges.

Counsel then attended to procedural

本組向執法機關提供準確及適時的法律指引。尋求法律指引的檔案會分配給本組律師處理，負責律師會就證據是否充分及控罪是否適當提供法律指引。

負責律師接着會處理程序上的事宜，以確保案件可適時交付原訟法庭判刑或審理。我們會與執法機關緊密合作，決定須否作進一步調查和進行哪方面的調查，或搜集什麼證據，以加強控方的證據。

我們的工作不會在決定是否起訴嫌疑人後完結。在提供法律指引後，假若是決定檢控，我們會處理案件交付審判的整個程序。在2012年，這些程序差不多全為“書面偵訊”，因初級偵訊日漸罕見。如被告在交付審判時承認控罪，案件會交付判刑，負責的律師會出席原訟法庭的判刑聆訊，以便專責處理由提供法律指引至被告被定罪和判刑的整個程序。

如被告在交付審判時不承認控罪，負責律師會隨之擬備公訴書，送交法庭存檔。擬備公訴書是本組律師的重要職能之一。負責律師必須慎重考慮公訴書應載列什麼控罪，以及最終應向陪審團提交什麼控罪。正如 *R v N and others* (2010 EWCA Crim 941) 一案指出，“(檢控官)必須密切留意案件的實際情況，而絕對無須理會那些在法律理論上可能出現的情況；另外亦要細心留意案件進入審訊後所產生的刑責，以及用以支持指控的證據，最後還要避免控罪重複，並且避免令陪審團和法官面對不必要的繁複問題，以致最終浪費緊絀的寶貴資源。”對於這項“忠告”，組內律師一直盡力遵循。

為確保案件處理方式貫徹一致，本組律師會與負責在法庭上檢控的律師一同出席審訊前預審聆訊，並在有需要時提供協助。我們致力建立這種檢控人員間的夥伴關係，以確保審訊時能有效表達案情和提舉證據。此外，負責律師會定期處理披露事宜和向法庭提交附加證據。除了提供法律指引及案件籌備工作外，組內人員亦處理大量由原訟法庭審理的保釋聆訊。

涉及受嚴重性侵犯受害者(包括成人和易受傷害證人)的案件，一直是極具挑戰性的工作。涉及本身為受害者或證人的易受傷害證人的案件，負責律師會小心留意受害者被侵犯後至完成作供期間一直承受的創傷，並會盡量以謹慎和尊重的態度對待受害者及證人，讓他們可在不具威嚇性的環境下作供。

matters to ensure that the cases were committed to the Court of First Instance for sentence or trial in a timely manner. Counsel worked closely with the law enforcement agencies to decide whether, and if so what, further enquiries or evidence was needed to strengthen the prosecution case.

The role of the advising counsel does not end with their decision on whether or not to charge a suspect. After giving advice to proceed with a case, counsel are also responsible for carrying the case through the committal proceedings. In 2012, these proceedings were almost exclusively “paper committals”, as preliminary inquiries have now become rare. Where the accused was committed for sentence after pleading guilty at committal, advising counsel attended the sentencing hearing in the Court of First Instance, thus taking the case all the way through from advice to conviction and sentence.

Where the accused pleaded not guilty at committal, advising counsel dealt with the subsequent preparation and filing of the indictment. The preparation of the indictment is one of the most important functions of advising counsel. It is important that advising counsel reflect carefully on what counts should be included and ultimately presented to the jury. As was stated in *R v N and others* 2010 EWCA Crim 941, “this requires close attention to the realities of the case and none at all to the theoretical legal possibilities that may arise. It also requires careful attention to the criminality which has resulted in the case coming to trial, as well as the evidence to support the allegation. Finally it requires the avoidance of duplication and the risk of unnecessary complications both for the jury and for the judge and the ultimate wasting of scarce and valuable resources.” Counsel endeavour to follow this “advice” fully.

To maintain continuity, advising counsel attended pre-trial reviews with trial counsel, giving their input whenever needed. We have fostered this prosecution partnership in order to present cases more effectively at trial. Advising counsel also regularly dealt with issues of disclosure and the filing of additional evidence. In addition to their advisory and trial preparation work, members of the Section

also dealt with a large number of bail hearings in the Court of First Instance.

Cases involving victims of serious sexual abuse (both adult and vulnerable witnesses) continued to be a challenging area. Cases involving vulnerable witnesses as victims themselves or as witnesses of the alleged offences are also an area of concern. Counsel were careful to recognize the continuing trauma suffered by these victims from the time of their abuse to the conclusion of their testimony. Every effort was made to treat these victims and witnesses with care and respect and to enable them to give their evidence in a non-intimidating environment.

In previous editions of this publication, we have referred to the perennial difficulties of keeping up to date with case law and developments in medical and forensic science. Of course these are issues with which all criminal lawyers have to grapple. Time is a valuable and scarce resource for all of us.

Membership of the Section has changed during the year. The average age of Section members was lowered considerably with the arrival of the newcomers, who have all settled into the work of the Section admirably.

The undoubted highlight of the year professionally was the Criminal Law Conference organised by the DPP and held in November. A number of past and present members of the Section prepared papers for the Conference and it was a testament to their hard work and ability that these papers were favourably received. It was a rare and valued opportunity to make even a small contribution to the future development of the criminal law in Hong Kong.

Over the past year, 486 cases were dealt with by the Section. Of these, 180 cases were committed for sentence after pleas of guilty at committal, and in 306 cases indictments were filed.

In *HKSAR v Wong Koon Chow, Eddy* HCCC 318 of 2011, the accused pleaded guilty to a number of sexual offences involving two victims aged 12 and 13 and to the making and possession of child pornography. He received a total sentence of 12 years and 4 months.

在過往出版的《刑事檢控科工作回顧》中，我們曾提及掌握最新案例及醫學和法證學發展的種種困難，這固然是每一位刑事法律師須當竭力克服的。對本組所有律師來說，時間畢竟是緊絀的寶貴資源。

年內，本組有不少人事變動。隨着新組員加入，組員平均年齡大幅降低；而新組員全都迅速掌握本組職務。

本年在專業方面的重頭戲，首推刑事檢控專員在 11 月主辦的刑事法律研討會。組內多位前任和現任成員都為研討會撰寫文章，廣受好評，足證他們的努力和才能得到認同。能夠為香港刑事法的未來發展盡一分綿力，這機會實在難能可貴。

本組去年處理的案件共 486 宗，其中 180 宗的被告在交付審判時承認控罪，其後交付判刑，306 宗的公訴書則送交存檔。

在香港特別行政區 訴 黃冠秋（高院刑事事件 2011 年第 318 號）一案，被告承認多項涉及兩名 12 歲和 13 歲受害者的性罪行，以及製作和管有兒童色情物品罪，被判處監禁共 12 年 4 個月。

在香港特別行政區 訴 羅福娣（高院刑事事件 2011 年第 274 號）一案，被告承認誤殺及盜竊罪，被判處監禁 12 年。被告承認，她偷竊時被認識她的年老受害者發現，她感到害怕，用手掩着受害者的口，引致受害者其後死亡。

在香港特別行政區 訴 黃平（高院刑事事件 2011 年第 386 號）一案，被告被裁定誤殺罪名成立。被告在九龍一個建築地盤與一名同事發生爭執，他其後揮拳攻擊該名受害者，令受害者跌倒及撞傷頭部，傷重死亡。

在香港特別行政區 訴 劉翠花（高院刑事事件 2012 年第 8 號）一案，被告經審訊後被裁定因受激怒而誤殺罪名成立。她與丈夫激烈爭吵期間把他殺死。

在香港特別行政區 訴 梁顯誼（高院刑事事件 2012 年第 39 號）一案，被告襲擊和殺害年長母親。她以減責神志失常為由承認誤殺罪。由於被告有精神病記錄，被判處入院令。

在香港特別行政區 訴 簡家良（高院刑事事件 2011 年第 186 號）一案，當時 15 歲的被告襲擊母親及妹妹，把她們殺死。他以減責神志失常為由承認誤殺罪，被判處入院令。

In *HKSAR v Luo Fudi* HCCC 274 of 2011, the accused pleaded guilty to manslaughter and theft for which she was sentenced to 12 years' imprisonment. She admitted panicking after the elderly victim with whom she was acquainted had caught her stealing. She placed her hand over the victim's mouth resulting in her later death.

In *HKSAR v Wong Ping* HCCC 386 of 2011, the accused was found guilty of manslaughter arising out of a dispute with a colleague at a construction site in Kowloon. The accused had punched the victim after the initial dispute was over, causing the victim to fall and hit his head, resulting in injury which led to his death.

In *HKSAR v Liu Chui Fa* HCCC 8 of 2012, the accused was convicted of manslaughter on the basis of provocation after trial. She had killed her husband during a heated argument.

In *HKSAR v Leung Hin Yi* HCCC 39 of 2012, the accused pleaded guilty to manslaughter on the basis of diminished responsibility after attacking and killing her elderly mother. As the accused had a history of psychiatric illness, a hospital order was imposed.

In *HKSAR v Kan Ka Leung* HCCC 186 of 2011, the accused, a then 15-year-old, had attacked and killed his mother and younger sister by chopping them. He pleaded guilty to manslaughter on the basis of diminished responsibility for which a hospital order was imposed.

In *HKSAR v Wan Kim Chung* HCCC 351 of 2011, the accused, a taxi driver, was found guilty of the murder of a female acquaintance. He alleged he had been provoked. He later disposed of her body in the sea. The cause of death was drowning.

In *HKSAR v Lam Pui Fung* HCCC 385 of 2011, the accused was convicted of manslaughter after a retrial ordered by the Court of Appeal. He had killed the victim who was working as a prostitute during the course of a robbery.

In *HKSAR v Ng Sik Kei and Tsoi Wai Keung* HCCC 399 of 2010, both accused were convicted of murder after trial. The victim was a newspaper vendor who had had a dispute with the accused who ran a newspaper distribution business. She was seriously chopped in the morning as she prepared for work. The accused were not the actual choppers but had organized the attack.

In *HKSAR v Ng Nga Lun* HCCC 414 of 2011, the accused was convicted of the murder of an elderly male from whom he had taken identity and bank documents. Disguising himself as the deceased, he had stolen some \$600,000 by withdrawing the monies from the deceased's accounts.

In *HKSAR v Lam Siu Fung and Ng Pak Lun* HCCC 154 and 433 of 2011, the accused was convicted of murder. The victim had been attacked by a group of males inside a McDonald's outlet, suffering serious head injuries from which he later died.



Section I (1) – Court of First Instance Advisory  
分科一第 1 組 — 原訟法庭法律指引

在香港特別行政區 訴 溫劍聰(高院刑事案件 2011 年第 351 號)一案,被告是一名士司機,被裁定謀殺一名女友人罪名成立。他聲稱當時被激怒。他把女友人拋入海中。受害人是由於遇溺喪命。

在香港特別行政區 訴 林培峰(高院刑事案件 2011 年第 385 號)一案中,被告在行劫期間殺死一名正在賣淫的妓女。上訴法庭把案件發還重審後,被告被裁定謀殺罪名成立。

在香港特別行政區 訴 吳錫基及蔡偉強(高院刑事案件 2010 年第 399 號)一案,兩名被告經審訊後被裁定謀殺罪名成立。受害人是一名報販,與經營報紙發行業務的被告發生爭執,受害人早上準備開檔時遭斬至重傷。被告雖不是行兇者,卻是這次襲擊的策劃人。

在香港特別行政區 訴 吳雅倫(高院刑事案件 2011 年第 414 號)一案,被告被裁定謀殺一名老翁罪名成立。被告取去死者的身分證明及銀行文件後,假扮死者從死者帳戶提款,盜取了約 60 萬元。

在香港特別行政區 訴 林兆峰及吳柏麟(高院刑事案件 2011 年第 154 及 433 號)一案,被告被裁定謀殺罪名成立。受害者在一間麥當勞快餐店內被一群男子襲擊,頭部嚴重受傷,其後傷重死亡。

在香港特別行政區 訴 *Tahir Nawaz*(高院刑事案件 2012 年第 79 號)一案,被告被裁定謀殺妻子罪名成立。有人在沙灘上發現被告妻子屍體,她喉部嚴重受傷。雖然被告在審訊中否認控罪,但他先前在被拘捕後全盤承認殺害死者,而且 DNA 證據亦指證他涉及有關罪行。

### 分科一第 2 組 — 區域法院法律指引

對區域法院法律指引組來說,2012 年是充滿挑戰的一年。在人手方面,本組年內有數次人事更替。除律師的慣常調動外,本組副主管一職在下半年有重大轉變。自 2011 年 1 月起出任本組副主管的高寶翠女士,在 2012 年 8 月中調任訟辯分科一個高級職位。張潔宜女士接任後約三個月,加入了司法機構擔任常任裁判官。副主管一職最後在 2012 年 12 月由黃堅邦先生出任。

不過,本組的整體架構和人手在年內維持不變。本組由李鏡鏞先生掌管,共有五名高級檢控官(包括副主管)和 12 名檢控官。本組主要負責提供法律指引和籌備案件審訊工作,亦定期指派組員在區域法院

In *HKSAR v Tahir Nawaz* HCCC 79 of 2012, the accused was convicted of the murder of his wife whose body had been found on a beach with serious wounds to her throat. Although he denied the offence at trial, he had made full admission to killing the deceased after his arrest and there was DNA evidence implicating him in the offence.

### Section I (2) – District Court Advisory

2012 was a challenging year for the District Court Advisory Section. In terms of staffing, the year saw several rounds of reshuffle of Section members. Apart from the more routine movements of counsel, there were significant changes in the post of Deputy Section Head towards the latter part of the year. In mid-August, Ms Catherine Ko who had held the post of Deputy Section Head since January 2011, was transferred out of the Section to a senior post in the Advocacy Sub-division. She was succeeded by Ms Kathie Cheung who held the post for about three months before joining the Judiciary as a Permanent Magistrate. Mr Michael Wong eventually took over the post in December 2012.

There was however no change to the overall structure and manpower of the Section. The Section was headed by Mr Robert Lee, and comprised five Senior Public Prosecutors (including the Deputy Section Head) and 12 Public Prosecutors. The portfolio of counsel in the Section was predominately advisory and trial preparation, although Section members were regularly assigned to prosecute trials at the District Court and Magistrates' Courts. To this end, it was unanimous among counsel that a more diverse range of advocacy duties (and specifically prosecuting contested trials) is invaluable to their professional development as advising counsel. Through regularly prosecuting trials of different offences, counsel can hone their advisory skills and become more practically adept in evaluating evidence, assessing the credibility of witnesses and selecting charges.

The nuts and bolts for all Section members were to advise the police and other client departments on cases which warranted trials at the District Court, although counsel also provided substantive advice to cases which were found to be more appropriately dealt with at the Magistrates' Courts. In

this regard, the Section dealt with 1,120 cases which were transferred to the District Court following our advice. In each case, the advising counsel settled a written advice to the client department, which set out our decision and legal considerations on the evidence, the recommended charges, and the recommendation for the District Court as the proper venue of trial. Advising counsel also considered the evidence that the prosecution proposed to rely on at trial, namely the witnesses and exhibits necessary for the prosecution's case. Moreover, counsel also decided the scope of disclosure of materials to the defence.

Counsel observed that there was an increase in the number of serious traffic cases, in particular, those involving loss of lives or serious bodily harm. In 2012, we advised prosecutions at the District Court in 60 cases of dangerous driving. Among these cases, 28 cases resulted in deaths and the accused drivers were charged with causing death by dangerous driving. In another 15 cases which resulted in serious harm to passengers or other road users, the accused drivers were charged with causing grievous bodily harm by dangerous driving. The respective figures for these two types of offences stood at 21 and three in 2011. The problem of driving under the influence of drugs or alcohol was also noted as there were five cases of this nature in 2012, compared with only one case in 2011.

Given the rise in serious traffic cases which came to the Section, counsel had to constantly update their legal knowledge in road traffic offences. This prompted close liaison with police officers of the Accident Investigation Teams and Forensic Scientists of the Government Laboratory. In determining whether "the way the accused driver drove falls far below what would be expected of a competent and careful driver" (so that a case of dangerous driving, as opposed to careless driving, can be considered), advising counsel found it useful, in appropriate cases, to enlist the assistance of a Forensic Scientist to conduct a "line of vision" test at the location of the accident. Forensic evidence of this nature was considered useful in our decision on the strength of evidence and the appropriate charge. In addition, such evidence was invariably accepted and given considerable weight by the court.

和裁判法院的審訊中擔任檢控官。因此，本組律師一致認同，作為提供法律指引的律師，若能執行更廣泛的訟辯職務（特別是在有爭辯的審訊中擔任檢控官），會對我們的專業發展大有助益。透過定期在涉及不同罪行的審訊中擔任檢控官，可磨練我們提供法律指引的技巧，並在衡量證據、評估證人的可信程度和決定控罪方面更臻切實練達。

本組人員的實際工作，是就在區域法院提出檢控的案件，向警方和其他委託部門提供法律指引，但對於被認為較適宜由裁判法院審理的案件，本組律師亦會提供實質法律指引。在這方面，經本組處理並按照本組指引轉交區域法院審理的案件共 1,120 宗。每宗案件的負責律師會為委託部門擬定書面指引，列明本組就證據所作的決定和涉及的法律考慮因素、適合的控罪，以及區域法院是合適的審訊法院級別。律師也會考慮控方建議在審訊時作檢控的證據，即用以支持控方理據的證人和證物，並會決定向辯方披露案件材料的範圍。

本組律師注意到，近年來嚴重交通意外案件的數字有所上升，特別是涉及人命死亡或身體嚴重受傷的案件。在 2012 年，我們建議在區域法院提出檢控的危險駕駛案件共 60 宗，當中有 28 宗導致他人死亡，而被控司機被控以危險駕駛引致他人死亡罪名。在另外 15 宗導致乘客或其他道路使用者受嚴重傷害的案件中，被控司機被控以危險駕駛引致他人身體受嚴重傷害罪名。這兩類罪行的案件數目在 2011 年分別為 21 宗及三宗。我們亦留意到在藥物或酒精影響下駕駛的問題，這類案件在 2012 年有五宗，在 2011 年僅有一宗。

鑑於本組處理的嚴重交通意外案件數字日增，組內律師必須不斷汲取道路交通罪行的最新法律知識，並與交通意外調查組的警務人員和政府化驗所法證專家保持密切聯繫。我們認為，在衡量“被控司機的駕駛方式是否遠遜於一個合格而謹慎的駕駛人會被預期達到的水平”，並據此控以危險駕駛罪名而非不小心駕駛罪名時，如能在適當案件得到法證專家協助，在肇事現場進行“視線”測試對案件大有助益。這類司法科學鑑證有助我們就證據的強弱和恰當的控罪作出決定，法院亦往往接納和相當重視這類證據。

本組律師在處理涉及少年和易受傷害證人的案件時，一如過往地時刻留意和關心他們的利益。2012 年，本組處理涉及少年

In handling cases involving juveniles and vulnerable witnesses, counsel continued to be vigilant and sensitive to their well-being. In 2012, there were 33 cases involving sexual offences on juveniles or vulnerable witnesses. Advising counsel invariably advised the invoking of statutory provisions to protect the victims by applying to the court for an order to allow the victims to testify at trial via live television link, and to use their video recorded interviews with social workers or police officers as their evidence-in-chief. Relevant measures were also taken to protect the anonymity of the victims so that they would not be deterred from testifying in court. It was also hoped that potential victims and witnesses who had not reported the crimes inflicted on them would be encouraged to come forward and report to the authority.

During the year, we maintained close liaison with law enforcement agencies. Counsel were kept abreast of the latest modes of offending and the latest enforcement strategy by client departments. In turn, our clients were also made aware of matters of concern to us and the relevant legal considerations.

One such example was our cooperation with the Organised and Serious Crimes Bureau (OCTB) of the police. The OCTB is generally responsible for launching undercover police operations to combat triad societies. These operations invariably result in the detection of a vast number of offences, triad related or otherwise, and the identification of a great number of offenders. As the evidence against some of the offenders lies solely in the testimony of the undercover police officer, we adopted a pragmatic approach in advising on these cases. We sought to strike the right balance by according appropriate priority to the more serious offences and the chronological order of the incidents. We also gave serious consideration to the issue of joinder so that connected offences and offenders were properly dealt with before the same tribunal. It was considered that this resulted in a more efficient handling of such cases.

Crimes are a reality of life, and are continually evolving with the times. Whilst some years ago the exploitation and thefts of *Podocarpus macrophyllus* (commonly known as “Buddhist pines”) had been

prevalent, no such cases were submitted for advice or dealt with by the court in 2012. Instead, there was a proliferation of the exploitation and thefts of *Aquilaria Sinensis* (commonly known as “incense trees”) in various areas of Hong Kong. Last year, we dealt with 26 cases of theft of incense trees. In order to protect the endangered flora, under the relevant provisions in the Organised and Serious Crimes Ordinance, we applied for an enhancement of sentences in all 26 cases by providing the court with information pertaining to the nature and extent of harm to the environment and community caused by the offence. In all but one of the 26 cases, the court granted the application and enhanced the sentence by 20% to 33% for the term of imprisonment imposed on the defendants.

We also applied for an enhancement of sentence in 15 cases of telephone deception and associated money laundering in 2012.

On the whole, counsel in the Section completed a heavy caseload in terms of providing legal advice and preparing cases for trial at District Court whilst striving to take up a considerable share of advocacy and court work. Although there was a significant change of faces in the Section in 2012, counsel in the Section maintained high morale, worked hard and strove for improvement in both quality and quantity.

### Section I (3) – Magistrates’ Courts Advisory

In 2012, the Magistrates’ Courts Advisory Section was headed by Mr Edmond Lee who supervised the work of seven Senior Public Prosecutors, 12 Public Prosecutors, two Chief Court Prosecutors and approximately 90 official prosecutors of different ranks at the Court Prosecutor grade. The major duty of the Section was to provide legal advice to the police and various government departments on criminal prosecution instituted in the seven Magistrates’ Courts in Hong Kong.

The Section advised on a large variety of cases referred by the Police. These ranged from the straightforward cases of shop theft or possession of dangerous drugs, to the relatively complicated cases of deception and fraud, and to sensitive cases arising from public order events. Over 20 government departments including the Immigration

或易受傷害證人的性罪行案件共有 33 宗。負責律師均會建議援引法定條文保護受害者，包括申請法庭命令，讓受害者以電視直播聯繫方式在審訊作供，以及採用社工或警務人員與受害者會面的錄影會面記錄作為主問證供。另外，負責律師亦會採取合適措施，確保受害者身分保密，使他們無懼出庭作供。我們希望這些措施可鼓勵其他遭受性罪行侵害而沒有舉報的受害者和證人挺身而出，向當局舉報罪行。

年內，我們與各執法機關保持緊密聯繫。各有關部門會讓本組律師掌握最新的罪行模式及執法策略，我們也讓部門了解我們所關注的事項及相關的法律考慮因素。

我們與警方有組織罪案及三合會調查科緊密合作，便是一例。有組織罪案及三合會調查科一般負責執行臥底行動，以打擊三合會。這些行動總會偵查到大量與三合會有關及其他的罪行，並會揭發多名罪犯。有部分案件，臥底警員的證供可能是指證部分罪犯的唯一證據，我們提供指引時會採取務實做法。我們會作出適切權衡，並按較嚴重的罪行及事件發生的日期適當地優先處理。此外，我們亦會審慎考慮合併控罪問題，把有關連的罪行及罪犯交由同一法院審理，這個安排應會提高處理這些案件的工作效率。

罪案是我們生活必然面對的現實，不法之徒的犯罪手法更日新月異。數年前，經常發生砍伐和盜取學名為 *Podocarpus macrophyllus* 的樹木（通常稱為“羅漢松”）的罪行，但在 2012 年，就這類事件尋求法律指引或提交法院審理的個案並無出現，取而代之，是在香港各區砍伐和盜取學名為 *Aquilaria Sinensis* 的樹木（通常稱為“土沉香”）的罪行激增。去年，我們處理了 26 宗盜竊土沉香的案件。為保護這種瀕危植物，我們在所有 26 宗案件中，根據《有組織及嚴重罪行條例》的相關條文，向法院提供資料，說明此罪行對環境及社會所造成損害的性質及程度，以申請加重刑罰。在這 26 宗案件中，除一宗外，區域法院均批准申請，把各被告的監禁刑期增加 20% 至 33%。

在 2012 年，我們亦就 15 宗電話騙案及相關清洗黑錢案件，申請加重刑罰。

整體而言，本組律師工作繁重，我們不但提供法律指引和處理區域法院審訊的案件籌備工作，同時亦分擔相當數量的訟辯及法庭檢控工作。在 2012 年，本組雖有重大



Section I (2) – District Court Advisory  
分科一第 2 組 — 區域法院法律指引

Department, the Labour Department, the Buildings Department, the Environmental Protection Department and the Department of Health also sought advice from this Section on their departmental prosecutions in respect of various regulatory offences. For each case, counsel would carefully consider, in accordance with *The Statement of Prosecution Policy and Practice*, the evidence and all the circumstances to decide whether a prosecution was warranted and if so, settle the charges. Counsel in this Section also advised on whether a particular case was suitable to be disposed of by way of the “bind over” procedure.

This Section also assisted court prosecutors and fiat counsel on plea negotiations and other trial issues. When the occasion demanded it, counsel attended pre-trial reviews and mention hearings in addition to their advisory duties. They also conducted trials and appeals before the various levels of courts.

In 2012, counsel of this Section advised on and prosecuted a number of cases of public order events relating to public meetings or public processions. In *HKSAR v Leung Kwok Hung and others* KTCC 4298/2012, eight defendants were prosecuted for assisting in holding an unauthorized assembly and knowingly taking part in an unauthorized assembly, after taking part in a demonstration on 1 July 2011 calling for universal suffrage in 2012, opposing hegemony by property developers, and urging the Chief Executive to step down. A total of six defendants were convicted and

fined while the remaining two were dealt with by way of a bind over order.

In the year, this Section also advised on numerous cases arising from direct confrontation between supporters of the “Falun Gong” and the newly established “Hong Kong Youth Care Association” on the street. These led to the commission of offences such as criminal damage, assault and theft. On legal advice, the offenders were prosecuted or bound over to keep peace or to be of good behaviour.

The prosecution of fraud and deception cases involving pregnant Mainland Chinese women acting jointly with other persons to deceive public hospitals into registering them for obstetrics services by producing false medical documents about their pregnancy also featured in the year. The decision was made on public interest grounds not to prosecute the pregnant women themselves, as they could then be repatriated as soon as possible. On the other hand, the accomplices who were intermediaries, friends or relatives were prosecuted as permitted by the evidence.

Cases involving unauthorized building works and unlawful occupation of Government land, and on which counsel in this Section advised the Buildings Department and the Lands Department, also attracted media attention. In *HKSAR v Hau Kwok Cheung and another* FLS 14713-14714/2012, the defendants failed to comply with an order issued by the Building Authority to demolish an unauthorized 4th floor in a village house in Sheung Shui. At trial, the defendants argued that their land

的人事調動，但組內律師依然士氣高昂。我們工作勤奮，質量並重，不斷求進。

### 分科一第3組 — 裁判法院法律指引

2012年，裁判法院法律指引組由李俊文先生掌管，負責監督七名高級檢控官、12名檢控官、兩名總法庭檢控主任，以及約90名不同職級的法庭檢控主任的工作。本組的主要職責，是就於本港七所裁判法院進行的刑事檢控，向警方及各政府部門提供法律指引。

本組就警方轉介的多類案件提供法律指引，包括案情簡單的店舖盜竊或管有危險藥物案件、案情較複雜的行騙或欺詐案件，以至公共秩序活動所引起的敏感案件。有超過20個政府部門，包括入境事務處、勞工處、屋宇署、環境保護署及衛生署，亦會就他們對各類規管罪行進行的檢控工作，向本組尋求法律指引。組內律師會依據《檢控政策及常規》，審慎考慮每宗案件的證據和所有情況，決定應否提出檢控，並在決定檢控時擬定控罪。本組律師亦會就某一案件是否適宜以“簽保”程序處理，提供法律指引。

本組也會協助法庭檢控主任和外判律師處理認罪商討和其他審訊事宜。除提供法律指引外，組內律師也會在有需要時出席審訊前覆核和提訊，並會處理多個級別法院的審訊及上訴工作。

2012年，本組律師就多宗涉及公眾集會或公眾遊行的公共秩序活動案件，提供法律指引和出庭檢控。在香港特別行政區訴梁國雄及其他人(觀塘裁判法院刑事案件2012年第4298號)一案，八名被告被控在2011年7月1日參與要求在2012年落實普選、反對地產霸權和促請行政長官下台的示威活動後，協助舉行未經批准集結和明知而參與未經批准集結的罪名。法院裁定六名被告罪名成立，判處罰款，至於其餘兩名被告，法院以簽保令的方式處理。

年內，本組亦就“法輪功”支持者與新成立的“香港互助青年協會”支持者之間在街頭直接衝突所引起的多宗案件，提供法律指引。這些事件中有人觸犯刑事毀壞、襲擊及盜竊等罪行。根據我們的法律指引，犯事者分別被起訴或須簽保守行為。

年內有若干宗檢控欺詐或行騙罪行的案件，是涉及內地孕婦與其他人共同行事，向公營醫院呈交有關懷孕的虛假醫療文

件，藉以欺騙醫院讓他們登記使用產科服務。我們基於公眾利益理由，決定不起訴孕婦本人，以便可以盡快把她們遣返。另一方面，在有充分證據的情況下，我們起訴了作為中介人、朋友或親屬的從犯。

本組律師曾就一些涉及違例建築工程及非法佔用政府土地的案件，向屋宇署及地政總署提供指引，而這些案件亦引起傳媒關注。在香港特別行政區訴侯國祥及另一人(粉嶺裁判法院傳票2012年第14713至14714號)一案，被告沒有遵從建築事務監督命令，清拆上水一幢村屋內屬違例工程的第四樓層。被告在審訊中辯稱，他們的土地屬集體官契下持有的舊批屋地，對高度並無限制；又指《基本法》第四十條保障新界原居民的合法傳統權益，這條款適用於他們的個案。他們亦辯稱，違例建築工程在新界已存在多年，而政府一直沒有干預，令他們對維持現狀存有合理期望。法院全盤拒絕這些論據，裁定被告罪名成立並處以罰款。

在香港特別行政區訴極樂寺(屯門裁判法院傳票2012年第13932號)一案，極樂寺在超出其私人土地界線的地方向公眾提供靈灰安置所服務，被控以不合法佔用政府土地罪。法院裁定被告罪名成立，判處罰款。《土地(雜項條文)條例》賦權政府拆掉任何不合法佔用政府土地的構築物，並向被定罪的人收回清拆費用。香港特別行政區訴梁新發(粉嶺裁判法院傳票2012年第10504至10505號)一案是另一宗不合法佔用政府土地的案件，案中政府向作為大棠荔枝山莊經營者的被告收回33萬元。

在2012年，本組律師盡心竭力提供優良的檢控服務，讓刑事案件可於香港裁判法院能更妥善地審理。



Section I (3) – Magistrates' Courts Advisory  
分科一第3組 — 裁判法院法律指引

was an Old Scheduled Lot held under a Block Crown Lease which did not impose any height restriction. They argued that Article 40 of the Basic Law, which protected the lawful traditional rights and interests of the indigenous inhabitants of the New Territories, was applicable in their case. They also contended that unauthorized building works had existed in the New Territories for many years without interference from the Government, and therefore they had a legitimate expectation that the status quo would be maintained. All these arguments were rejected by the Court and the defendants were convicted and fined.

In *HKSAR v Gig Lok Monastery TMS 13932/2012*, Gig Lok Monastery was prosecuted for unlawful occupation of Government land, for offering columbarium services to the public beyond the boundary of its private land. On conviction, a fine was imposed. The Government is empowered under the Land (Miscellaneous Provisions) Ordinance to demolish any structure that unlawfully occupies Government land and to recover from the convicted person the costs of the demolition. In another case of unlawful occupation of Government land, *HKSAR v Leung San Fat FLS 10504-10505/2012*, the Government recovered \$330,000 from the defendant who was the operator of the Tai Tong Lychee Valley.

Throughout 2012, counsel of the Section worked tirelessly to provide a valuable prosecutorial service that contributed to the effective delivery of criminal justice in the Magistrates' Courts in Hong Kong.