

終審法院 Court of Final Appeal

終審法院

終審法院於 1997 年 7 月 1 日根據《基本法》第十九條成立；《基本法》第十九條規定，香港特別行政區享有獨立的司法權，包括終審權。

終審法院是香港特別行政區級別最高的上訴法院，負責審理不服高等法院民事或刑事判決而提出的上訴，可以維持、推翻或變更各下級法院的判決。香港法例第 484 章《香港終審法院條例》第 17 條詳列了終審法院的各項權力，第 484A 章《香港終審法院規則》列明終審法院的審理程序。

終審法院由終審法院首席法官掌領，其他成員有三位常任法官，以及多位本地和來自其他普通法適用地區的非常任法官。截至 2005 年 9 月 30 日，終審法院共有八位本地和九位來自其他普通法適用地區的非常任法官。

COURT OF FINAL APPEAL

The Court of Final Appeal was established on 1 July 1997 pursuant to Article 19 of the Basic Law which provides that the Hong Kong Special Administrative Region be vested with independent judicial power, including that of final adjudication.

The Court of Final Appeal is the highest appellate court within the Hong Kong Special Administrative Region. It hears appeals on civil and criminal matters from the High Court. It may confirm, reverse or vary the decision of the lower courts. The powers of the Court are set out in section 17 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The procedures of the Court are set out in the Hong Kong Court of Final Appeal Rules (Cap. 484A).

The Court of Final Appeal is headed by the Chief Justice and comprises three Permanent Judges, a panel of Non-Permanent Hong Kong Judges and Non-Permanent Judges from other common law jurisdictions. As at 30 September 2005, there are eight Non-Permanent Hong Kong Judges and nine Non-Permanent Judges from other common law jurisdictions in the panel.



終審法院
Court of Final Appeal





終審法院首席法官出席在北京舉行的第二十二屆世界法律大會
The Chief Justice attends the 22nd Congress on the Law of the World in Beijing

民事管轄範圍

終審法院受理以下各類民事上訴：

- 不服上訴法庭就任何民事訴訟或事項所作的最終判決而提出的上訴，而上訴爭議的數額達港幣 100 萬元或以上的，終審法院會視提出該上訴為一項當然權利而予以受理；
- 不服上訴法庭就任何民事訴訟或事項所作的其他判決而提出的上訴，而該上訴所涉及的問題具有重大廣泛的或關乎公眾的重要性，或因其他理由，以致應交由終審法院裁決者，上訴法庭或終審法院須酌情決定終審法院是否受理；以及
- 如上訴是就原訟法庭 ——
 - i. 根據《行政長官選舉條例》第 37(1) 條所作的裁定而提出的；或

JURISDICTION IN CIVIL MATTERS

An appeal shall lie to the Court of Final Appeal:

- as of right, from any final judgment of the Court of Appeal in any civil cause or matter, where the matter in dispute is of the value of \$1,000,000 or more;
- at the discretion of the Court of Appeal or the Court of Final Appeal, from any other judgment of the Court of Appeal in any civil cause or matter, if the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court of Final Appeal for decision; and
- at the discretion of the Court of Final Appeal, from:
 - i. a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance; or

- ii. 就根據《高等法院條例》第21K條提出的司法覆核申請；或根據該條例的任何其他法律程序，

所作的判決或命令而提出的，而該司法覆核或法律程序是以根據《行政長官選舉條例》第 28 條獲宣布在選舉中當選的候選人能否合法地就任為行政長官作為爭論點的，則終審法院須酌情決定是否受理該上訴。

- ii. a judgment or order of the Court of First Instance in an application for judicial review under section 21K of the High Court Ordinance; or any other proceedings under that Ordinance,

which put in issue whether the candidate declared under section 28 of the Chief Executive Election Ordinance as elected at an election can lawfully assume the office of the Chief Executive.

Leapfrog Appeals

Since 2 December 2002, with the introduction of a leapfrog procedure, civil appeals may, in certain cases, go directly to the Court of Final Appeal from the Court of First Instance, bypassing the intermediate Court of Appeal.

The leapfrog procedure is an exceptional one. The Court of Final Appeal has to grant leave, and the Court of First Instance has to certify



終審法院首席法官與芬蘭共和國司法部長約翰內·科斯基寧(左二)及其率領的代表團會面
The Chief Justice meets with the delegation led by Mr Johannes Koskinen, Minister of Justice of Finland (second left)

越級上訴程序

越級上訴程序於 2002 年 12 月 2 日起開始，某些原訟法庭的民事上訴案件無需經上訴法庭便可直接送交終審法院處理。

越級上訴程序是一項特殊的程序，須經終審法院許可，並得原訟法庭證明：



終審法院首席法官與哈薩克斯坦共和國最高法院院長凱萊特·瑪米(左四)及其率領的代表團會面
The Chief Justice meets with the delegation led by Mr Kairat Mami, Chairman of the Supreme Court of the Republic of Kazakhstan (fourth left)



終審法院首席法官與中華人民共和國最高人民法院副院長萬鄂湘會面
 The Chief Justice and Mr Wan E-xiang,
 Vice President of the Supreme People's
 Court, PRC



終審法院首席法官與聯合國經濟、社會及文化權利委員會主席 Virginia Bonoan-Dandan 教授（中）及委員 Maria Virginia Bras Gomes 女士（左）會面
 The Chief Justice meets with Professor Virginia
 Bonoan-Dandan, Chairperson (centre), and Ms
 Maria Virginia Bras Gomes, Member (left), of
 the United Nations Committee on Economic,
 Social and Culture Rights

- 就該法律程序中法官所作的決定而言，有關條件已經符合，即除了達到有關要求外，該決定所涉及的法律問題具有重大廣泛的或關乎公眾的重要性，而該法律問題純粹或主要是關乎對某法例或《基本法》的詮釋，且該法官在該法律問題上必須受上訴法庭或終審法院在之前的法律程序中所作的決定約束；
- 有足夠理據向終審法院提出上訴，因而有理由申請上訴許可；以及
- 該法律程序的各方同意給予證明書。

截至 2005 年 9 月 30 日，採用越級上訴程序的民事案件共有三宗，而終審法院已於 2004 年 1 月及 2005 年 7 月分別就其中兩宗案件作出判決，第三宗案件則於 2005 年 12 月進行聆訊。

- that the relevant conditions are fulfilled in relation to a decision of the judge in those proceedings; such conditions are fulfilled if, among others, a point of law of great general or public importance is involved in that decision; it relates wholly or mainly to the construction of statute or the Basic Law, and the judge is bound by a decision of the Court of Appeal or the Court of Final Appeal in previous proceedings;
- that a sufficient case for an appeal to the Court of Final Appeal has been made out to justify an application for leave to bring such an appeal; and
- that all the parties to the proceedings consent to the grant of a certificate.

The leapfrog procedure was engaged in three civil cases up to 30 September 2005. Judgments for two of them were given by the Court of Final Appeal in January 2004 and July 2005 respectively. The third case was heard in December 2005.



終審法院常任法官陳兆愷（中）與澳大利亞昆士蘭州最高法院法官 Henry Fryberg（右）及昆士蘭州政府辦事處駐香港及南中國首席代表李世榮（左）會面

The Hon Mr Justice Chan, Permanent Judge of the Court of Final Appeal (centre), meets with the Hon Mr Justice Henry Fryberg, Justice of the Supreme Court of Queensland (right) and Mr Simon Lee, Commissioner of Queensland Government Trade and Investment Office, Hong Kong and South China (left), Australia

刑事管轄範圍

終審法院有酌情權，決定是否受理在以下兩類情況提出的刑事上訴：

- 不服上訴法庭的最後判決；
- 不服原訟法庭的最後判決（並非由陪審團作出的裁定或裁決），但不能向上訴法庭提出上訴。

上訴許可

上訴許可的申請由上訴委員會聆訊，委員會成員由終審法院首席法官和他提名的兩位或三位常任法官組成。若常任法官人數不論任何原因不足以組成上訴委員會，則終審法院首席法官須指派一位本地非常任法官補缺。上訴委員會的決定是最終決定，不得上訴。

依據《香港終審法院規則》第7條規則，若司法常務官認為某項上訴許可的申請並無顯示合理理由應給予上訴許可，則他可向申請人發出傳票，傳召他到上訴委員會席前提出為何不應駁回他申請的因由。上訴委員會在考慮有關事項後，可命令駁回申請，或發出在案中秉持公正所需的其他指示。

JURISDICTION IN CRIMINAL MATTERS

An appeal shall, at the discretion of the Court of Final Appeal, lie to the Court of Final Appeal in any criminal cause or matter from:

- any final decision of the Court of Appeal;
- any final decision of the Court of First Instance (not being a verdict or finding of a jury) from which no appeal lies to the Court of Appeal.

LEAVE TO APPEAL

The Appeal Committee hears and determines applications for leave to appeal. It consists of the Chief Justice and two Permanent Judges, or three Permanent Judges nominated by the Chief Justice. The Chief Justice shall nominate a Non-Permanent Hong Kong Judge to sit in place of a Permanent Judge where a sufficient number of Permanent Judges is not available for any cause. The decision of the Appeal Committee is final and not itself subject to appeal.

Pursuant to Rule 7 of the Hong Kong Court of Final Appeal Rules, where the Registrar considers that an application discloses no reasonable grounds for leave to appeal, a summons will be issued to the applicant, calling upon him to show cause before the Appeal Committee why the application should not be dismissed. The Appeal Committee may, after considering the matter, order that the application be dismissed or give such other directions as the justice of the case may require.

上訴聆訊

終審法院的上訴案件由五位終審法院法官組成合議庭聆訊，若有需要，則邀請一位本地或來自其他普通法適用地區的非常任法官共同聆訊。

終審法院首席法官為合議庭庭長，若終審法院首席法官不論任何原因不能出席聆訊上訴，便須指派一位常任法官代其出席，並擔任合議庭庭長一職。

終審法院登記處

終審法院登記處負責收納及保存提交終審法院的文件。由於沒有律師代表的訴訟人數目不斷增加，登記處的同事需耐心向他們詳細解釋需要依循的法庭程序。

隨着終審法院的電腦化案件管理系統與上訴法庭和原訟法庭的系統互相聯結，案件排期現已更為便捷，而在案件進度監管和登記處的案件管理量等各方面亦大有提升。

案件量及輪候時間

終審法院的案件量，除刑事上訴外，整體上大幅增加。與 2004 年相比，2005 年刑事和民事上訴許可申請的數量預計增加約 55%。此外，民事上訴案件量估計亦會上升 50%。案件輪候時間則由於案件量飆升，以及於適當時在排期聆訊方面配合大律師的工作日程等多個因素，以致未能達到訂下的目標。然而，司法機構定會竭力盡量縮短案件的輪候時間。

HEARING OF APPEALS

In hearing and determining an appeal, the Court will consist of five Judges, and the Court may, as required, invite a Non-Permanent Hong Kong Judge or a Non-Permanent Judge from another common law jurisdiction to sit on the Court.

The Chief Justice is the President of the Court. Where he is not available to hear an appeal for any cause, he shall designate a Permanent Judge to sit in his place and be the President.

COURT OF FINAL APPEAL REGISTRY

The Court of Final Appeal Registry is responsible for receiving and maintaining documents filed with the Court of Final Appeal. With an increasing number of unrepresented litigants approaching the Court, the Registry staff has to devote more efforts in explaining to them the necessary court procedures to follow.

With the establishment of a computerised case management network with the Court of Appeal and the Court of First Instance, the listing of cases, checking of progress and case management capabilities of the Registry has been much enhanced.

CASELOAD AND WAITING TIME

The overall caseload in the Court of Final Appeal increased significantly except for substantive criminal appeals. Applications for leave to appeal in both criminal and civil matters are expected to increase by about 55% in 2005 as compared to those in 2004. The caseload for civil appeals is also projected to grow by 50%. The average waiting time exceeds the target marginally. This is due to several factors including the upsurge in caseload and accommodating counsel's diaries in fixing dates where appropriate. The Judiciary will make every effort to improve the court waiting times.

表 1 Table 1		終審法院的案件量 CASELOAD OF THE COURT OF FINAL APPEAL				
		2004 案件數目 No. of Cases				
		承接往年☆ Brought forward from previous years	送交 Filed	結案* Disposed of	訴訟中止# Inactive	訴訟進行中 In progress
不服高等法院判決而提出的上訴許可申請 Applications for leave to appeal from the High Court	刑事 Criminal	14	65	68(22)	0	11
	民事 Civil	8	26	25(13)	0	9
合計 TOTAL		22	91	93	0	20
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	1	19	11	0	9
	民事 Civil	11	18	19	0	10
合計 TOTAL		12	37	30	0	19
雜項程序 @ Miscellaneous proceedings		0	2	2	0	0

		2005 (截至9月30日 up to 30 Sept) 案件數目 No. of Cases				
		承接往年☆ Brought forward from previous years	送交 Filed	結案* Disposed of	訴訟中止# Inactive	訴訟進行中 In progress
不服高等法院判決而提出的上訴許可申請 Applications for leave to appeal from the High Court	刑事 Criminal	11	77	59(31)	0	29
	民事 Civil	9	29	30(16)	0	8
合計 TOTAL		20	106	89	0	37
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	9	8	11	0	6
	民事 Civil	10	20	10	0	20
合計 TOTAL		19	28	21	0	26
雜項程序 @ Miscellaneous proceedings		0	0	0	0	0

☆ 承接往年的案件是指訴訟中止及訴訟進行中的案件

Cases brought forward from previous years refer to cases in progress and inactive cases

* 結案的案件是指上訴許可申請 / 上訴得直、駁回、撤回、放棄或終止的案件
括號內的數字是根據《終審法院規則》(第 484A 章) 第 7 條被駁回的案件的數目

Cases disposed of refer to applications for leave to appeal/appeals allowed, dismissed, withdrawn, abandoned or discontinued

The figures in brackets indicate the number of cases dismissed under Rule 7 of the Court of Final Appeal Rules, Cap. 484A

訴訟中止的案件是指自最後一次送交文件之日起計一年內，並無任何（包括送交文件或聆訊）行動的案件

Inactive cases refer to those having no action (including filing of document or hearing) for one year from the date of last filing of document

@ 由二零零三年起新增案件類別

New case type from 2003 onwards

表 2 Table 2		終審法院案件輪候時間 WAITING TIME FOR CASES IN THE COURT OF FINAL APPEAL			
		輪候時間(日) Waiting Time (days)			
		目標 Target	2004	2005 (截至9月30日止) (as at 30 Sept)	2006 (預計) (Plan)
上訴許可申請 Applications for leave to appeal from the High Court	由聆訊通知書發出日到聆訊日 From notice of hearing to hearing				
	· 刑事案件 Criminal cases	45	44	61	45
	· 民事案件 Civil cases	35	45	47	35
上訴 Substantive appeals from the High Court	由聆訊通知書發出日到聆訊日 From notice of hearing to hearing				
	· 刑事案件 Criminal cases	100	82	47	100
	· 民事案件 Civil cases	120	86	124	120