

## 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。

### 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).



終審法院  
Court of Final Appeal



伍爾夫勳爵 (左) 在行政長官面前宣誓出任終審法院非常任法官  
*The Rt Hon the Lord Woolf of Barnes (left) swears in before the Chief Executive as Non-Permanent Judge of the Court of Final Appeal*

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2006年9月30日，終審法院共有六位本地和十位來自其他普通法適用地區的非常任法官。

### 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

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 2006, there are six Non-Permanent Hong Kong Judges and 10 Non-Permanent Judges from other common law jurisdictions in the panel.

### 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



終審法院首席法官與英國憲制事務大臣兼大法官范克林勳爵會面  
*The Chief Justice meets with the Rt Hon Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor, UK*





終審法院首席法官出席於美國紐約耶魯大學法學院舉行的2006年全球憲制研討會

*The Chief Justice attends the Global Constitutionalism Seminar 2006 at Yale Law School, New York, US*

- 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
  - 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。

### 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。

- 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. 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.



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沈德詠會面

*The Chief Justice meets with Mr Shen Deyong, Vice President of the Supreme People's Court, PRC*



終審法院首席法官(中)及終審法院常任法官陳兆愷(右一)與中華人民共和國最高人民法院副院長黃松有(左六)率領的代表團會面

*The Chief Justice (centre) and the Hon Mr Justice Chan, Permanent Judge of the Court of Final Appeal (first right), meet with a delegation led by Mr Huang Songyou, Vice President of the Supreme People's Court, PRC (sixth left)*

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：

- 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。

### 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。

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 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;
- 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
- all the parties to the proceedings consent to the grant of a certificate.

### 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.



## 上訴許可

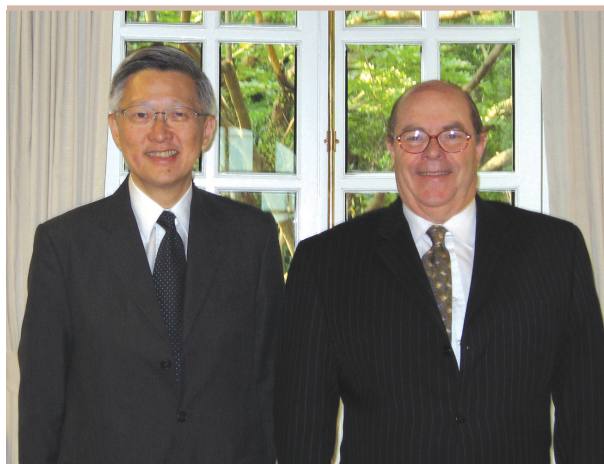
上訴許可的申請由上訴委員會聆訊，委員會成員由終審法院首席法官和他提名的兩位或三位常任法官組成。若常任法官人數不論任何原因不足以組成上訴委員會，則終審法院首席法官須指派一位本地非常任法官補缺。上訴委員會的決定是最終決定，不得上訴。

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。

## 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.



終審法院首席法官與英國劍橋大學公法中心主管  
Christopher Forsyth 教授會面  
*The Chief Justice meets Professor Christopher Forsyth,  
Director of the Centre for Public Law, University of  
Cambridge, UK*

## 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

2006年的上訴案件量及申請上訴許可的數目預計仍然處於高水平。

申請上訴許可的平均輪候時間稍為超出訂下的目標時間。上訴案件的輪候時間則可達標。司法機構會密切監察有關情況，並竭力將輪候時間維持在目標範圍之內。

## 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

In 2006, the caseload for appeals and applications for leave to appeal is expected to remain at a significant level.

While the average waiting time for applications for leave to appeal exceed the targets marginally, the target waiting time for substantial appeals can be met. The Judiciary will monitor the waiting time closely and will strive to keep the waiting time within targets.



表 1 Table 1		終審法院的案件量 CASELOAD OF THE COURT OF FINAL APPEAL				
		2005 案件數目 No. of Cases				
		承接往年 <sup>*</sup> Brought forward from previous years	送交 Filed	結案 <sup>*</sup> Disposed of	訴訟中止 <sup>#</sup> 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	107	86 (42)	0	32
	民事 Civil	9	40	39 (23)	0	10
合計 TOTAL		20	147	125	0	42
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	9	14	13	0	10
	民事 Civil	10	30	17	0	23
合計 TOTAL		19	44	30	0	33
雜項程序 Miscellaneous proceedings		0	0	0	0	0

		2006(截至9月30日 up to 30 Sept) 案件數目 No. of Cases				
		承接往年 <sup>*</sup> Brought forward from previous years	送交 Filed	結案 <sup>*</sup> Disposed of	訴訟中止 <sup>#</sup> 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	32	43	59 (30)	0	16
	民事 Civil	10	31	32 (18)	0	9
合計 TOTAL		42	74	91	0	25
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	10	6	11	0	5
	民事 Civil	23	21	24	1	19
合計 TOTAL		33	27	35	1	24
雜項程序 Miscellaneous proceedings		0	1	1	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

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	2005	<b>2006</b> (截至9月30日止) (as at 30 Sept)	2007 (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				
	<ul style="list-style-type: none"> <li>• 刑事案件 Criminal cases</li> <li>• 民事案件 Civil cases</li> </ul>	45	62	<b>49</b>	45
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				
	<ul style="list-style-type: none"> <li>• 刑事案件 Criminal cases</li> <li>• 民事案件 Civil cases</li> </ul>	100	61	<b>68</b>	100
		120	118	<b>84</b>	120