

第二章

# 終審法院



*Chapter 2*

# COURT OF FINAL APPEAL



終審法院首席法官李國能(右二)與終審法院常任法官(右起):陳兆愷·包致金及李義  
The Hon Chief Justice Mr Andrew Li (second right) with Permanent Judges of the Court of Final Appeal (from right): Chan, Bokhary and Ribeiro

## 終審法院

終審法院 1997 年 7 月 1 日根據《基本法》第 19 條成立；《基本法》第 19 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起的上訴，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。

終審法院的首長是終審法院首席法官，其他組成人員有三位常任法官、十二位本地和九位來自其他普通法地區的非常任法官。

布仁立爵士宣誓出任終審法院非常任法官，儀式由行政長官董建華主持  
Before the Chief Executive, Mr Tung Chee-hwa, Sir Gerard Brennan swearing-in to become Non-permanent Judge of the Court of Final Appeal

## COURT OF FINAL APPEAL

The Court of Final Appeal was established on July 1, 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 of Final Appeal are set out in section 17 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), Laws of Hong Kong. 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 12 Non-permanent Hong Kong Judges and nine Non-permanent Judges from other common law jurisdictions.



## 民事管轄範圍

終審法院審理以下各種上訴：

- 爭議數額達港幣 100 萬元或以上的，不服高等法院上訴法庭所作的最後判決而提起的上訴，當然由終審法院審理；
- 不服上訴法庭就其他民事爭議所作的判決而提起的上訴，由上訴法庭或終審法院酌情決定是否受理。若上訴涉及重大的、具廣泛影響的，或對公眾具重大意義的法律問題，應呈交終審法院作決定；及

- 如果原訟法庭根據

- 《行政長官選舉條例》第 37(1) 條作出決定；或
- 法例第 4 章《高等法院條例》第 21K 條就司法覆核申請作出判決或命令；或就其他程序申請作出判決或命令。

而這些決定或命令使根據《行政長官選舉條例》第 28 條獲宣告勝出的候選人可否合法就任行政長官一職這問題成為爭議，則不服 i 或 ii 而提起的上訴，由終審法院酌情決定是否受理。

## 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 amounts to or is of the value of HK\$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, ought to be submitted to the Court of Final Appeal for decision; and
- at the discretion of the Court of Final Appeal, from:
  - a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance; or
  - a judgment or order of the Court of First Instance in an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); 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.



艾俊彬爵士宣誓出任終審法院非常任法官  
The Rt Hon Sir Thomas Eichelbaum swearing-in to become Non-permanent Judge of the Court of Final Appeal



### 越級上訴程序

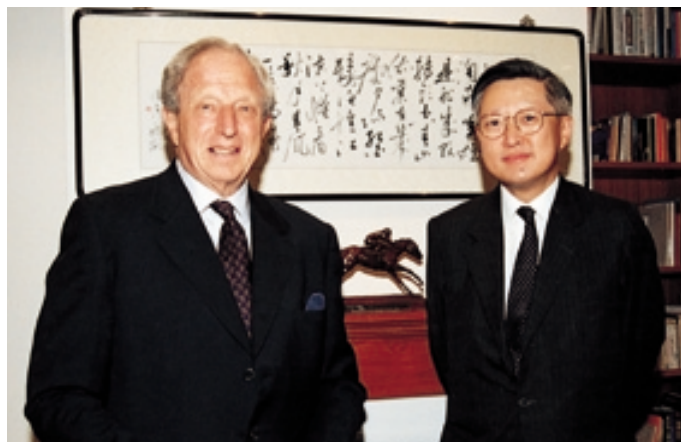
《香港終審法院（修訂）條例》草案 2001 年 6 月已提交立法會。修訂條例實施後，一些民事上訴可以無需經過上訴法庭直接送交終審法院審理。

越級上訴程序是特殊程序，只適用於能符合越級條件的案件，其優點是節省時間，提高訴訟效率。立法會草案委員會正在審議該草案。

### 刑事管轄範圍

刑事方面，終審法院有酌情權，決定是否受理在以下兩類情況提起的刑事上訴：

- 不服上訴法庭最後判決；
- 不服原訟法庭最後判決（並非陪審員作出的裁定或裁決），但不能向上訴法庭提起上訴。



終審法院首席法官與英格蘭和威爾斯首席法官伍爾夫勳爵會面  
The Chief Justice and The Rt Hon the Lord Woolf of Barnes, Lord Chief Justice of England and Wales



終審法院首席法官於二〇〇一法律年度開庭典禮上檢閱儀仗隊  
The Chief Justice inspects the Guard of Honour at the Ceremonial Opening of Legal Year 2001

### Leapfrog Appeals

The Hong Kong Court of Final Appeal (Amendment) Bill was introduced into the Legislative Council in June 2001. The purpose of the Bill is to provide for a leapfrog procedure by which civil appeals may, in certain cases, go direct to the Court of Final Appeal from the Court of First Instance, bypassing the Court of Appeal.

The procedure will be an exceptional one and will only apply to those cases which can fulfil the stipulated criteria. It would have the benefit of saving time and enhancing the efficiency of the process of litigation. The Bill is being scrutinised by a Bills Committee of the Legislative Council.

### JURISDICTION IN CRIMINAL MATTERS

An appeal shall, at the discretion of the Court of Final Appeal, lie to the Court 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.



終審法院首席法官與聯合國人權委員會代表 P N Bhagwati 法官會面  
The Chief Justice and Mr Justice P N Bhagwati, Representative from the Human Rights Committee of the United Nations

### 上訴許可

上訴委員會專門審理上訴許可申請，由終審法院首席法官和他委任的兩位常任法官組成，或由首席法官委任的三位常任法官組成。如果常任法官人數不論任何原因不足夠組成上訴委員會，則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。



終審法院首席法官與菲律賓最高法院法官 Artemio V. Panganiban 會面  
The Chief Justice and Justice Artemio V. Panganiban, Supreme Court of the Philippines

### 上訴的審理

終審法院審理上訴案件，由五位終審法院法官組成會議庭進行；若有需要，則邀請一位本地或來自其他普通法地區的非常任法官共同審理。首席法官須擔任會議庭庭長一職。首席法官不論任何原因不能出席審理上訴，則須指派一位常任法官替其出席，並充當會議庭庭長。

### LEAVE TO APPEAL

The Appeal Committee hears and determines applications for leave to appeal. It consists of the Chief Justice and two Permanent Judges nominated by the Chief Justice; 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 when 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.

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



終審法院首席法官與聯合國經濟社會文化權利委員會主席 Virginia Bonoan-Dandan 教授（左二）和委員會秘書 Paul Hunt 教授（右）會面  
The Chief Justice with Professor Virginia Bonoan-Dandan, Chairperson (second left) and Professor Paul Hunt, Rapporteur (right) of Committee on Economic, Social and Cultural Rights of the United Nations





終審法院首席法官與修讀香港大學普通法深造文憑的內地學生合照  
The Chief Justice receives Mainland students taking Post-Graduate Diploma in Common Law at the University of Hong Kong

### 終審法院登記處

終審法院登記處負責終審法院案件的存檔和檔案管理。登記處電腦化後，終審法院的案件管理系統與上訴法庭和原訟法庭的系統已經互聯，使案件排期、進度監管和必要管理資訊的製作三方面更為便捷。

### 案件量和輪候時間

2001年與2000年相比，上訴許可申請的數量估計會上升20%，但不服高等法院判決而提起的上訴數量則估計會下降約40%。整體而言，2001年兩者的輪候時間都在指標之內。



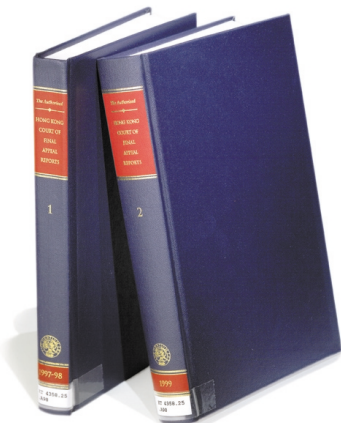
終審法院常任法官陳兆愷向「二〇〇一年內地律師研習計劃」參加者簡介司法機構的工作  
The Hon Mr Justice Patrick Chan, Permanent Judge of the Court of Final Appeal, briefs the participants of the Practical Training Scheme for Young Chinese Lawyers 2001

## THE COURT OF FINAL APPEAL REGISTRY

The Court of Final Appeal Registry is responsible for the filing and maintenance of records in action in the Court of Final Appeal. Upon computerisation of the Registry, a case management network with the Court of Appeal and the Court of First Instance has been established, thus facilitating listing of cases, checking of progress and compilation of essential management information.

## CASELOAD AND WAITING TIME

Regarding the applications for leave to appeal, it is estimated that there will be an increase of 20% in 2001 as compared to those filed in 2000. However, the caseload of the substantive appeals from the High Court in 2001 is estimated to be reduced by about 40% as compared to those filed in 2000. In general, the target waiting time for the applications for leave to appeal as well as the substantive appeals from the High Court can be met in the year of 2001.



☆ 承接往年的案件指訴訟進行中的案件，並不包括訴訟中止的案件  
Cases brought forward from previous years refer to cases in progress and do not include cases inactive

\* 結案指上訴許可申請上訴得直、駁回、撤回、放棄或終止。括號內的數字指根據《終審法院規則》(第484章)第7條被駁回的案件數目  
Disposed of refers to applications for leave to appeal/appeals allowed, dismissed, withdrawn, abandoned or discontinued. The figures in the bracket indicates the number of cases dismissed under Rule 7 of the Court of Final Appeal Rules, Cap. 484

# 訴訟中止指一年內沒有文件送交或聆訊  
Inactive refers to those having no action (including filing of document or hearing) for one year from the date of last filing of document

| 表1 終審法院的案件量<br>Table 1 Caseload of the Court of Final Appeal               |                |  |             |                    |                   |                      |
|--|----------------|--|-------------|--------------------|-------------------|----------------------|
|  |                | 2000<br>案件數目<br>No. of Cases                 |             |                    |                   |                      |
|  |                | 承接往年*<br>Brought forward from previous years | 送交<br>Filed | 結案*<br>Disposed of | 訴訟中止#<br>Inactive | 訴訟進行中<br>In progress |
| 不服高等法院判決而提出的上訴許可申請<br>Applications for leave to appeal from the High Court | 刑事<br>Criminal | 10   | 24          | 31                 | 0                 | 3                    |
|  | 民事<br>Civil    | 10   | 35          | 42                 | 0                 | 3                    |
| <b>合計<br/>Total</b>  |                | <b>20</b>                                    | <b>59</b>   | <b>73</b>          | <b>0</b>          | <b>6</b>             |
| 不服高等法院判決而提起的上訴<br>Substantive appeals from the High Court                  | 刑事<br>Criminal | 4  | 9           | 10                 | 0                 | 3                    |
|  | 民事<br>Civil    | 13   | 29          | 28                 | 0                 | 14                   |
| <b>合計<br/>Total</b>  |                | <b>17</b>                                    | <b>38</b>   | <b>38</b>          | <b>0</b>          | <b>17</b>            |
| 2001<br>案件數目(截至9月30日)<br>No. of Cases (up to 30 Sept)                      |                |  |             |                    |                   |                      |
|  |                | 承接往年*<br>Brought forward from previous years | 送交<br>Filed | 結案*<br>Disposed of | 訴訟中止#<br>Inactive | 訴訟進行中<br>In progress |
| 不服高等法院判決而提出的上訴許可申請<br>Applications for leave to appeal from the High Court | 刑事<br>Criminal | 3  | 30          | 24 (6)             | 0                 | 9                    |
|  | 民事<br>Civil    | 3  | 23          | 23 (4)             | 0                 | 3                    |
| <b>合計<br/>Total</b>  |                | <b>6</b>                                     | <b>53</b>   | <b>47</b>          | <b>0</b>          | <b>12</b>            |
| 不服高等法院判決而提起的上訴<br>Substantive appeals from the High Court                  | 刑事<br>Criminal | 3  | 4           | 3                  | 0                 | 4                    |
|  | 民事<br>Civil    | 14   | 13          | 14                 | 1                 | 12                   |
| <b>合計<br/>Total</b>  |                | <b>17</b>                                    | <b>17</b>   | <b>17</b>          | <b>1</b>          | <b>16</b>            |

| 表2 終審法院案件的輪候時間<br>Table 2 Waiting Time for Cases in the Court of Final Appeal |                        |  |              |                                      |                        |
|---|------------------------|--|--------------|--------------------------------------|------------------------|
|   |                        | 輪候時間(日)<br>Waiting Time (Days)                     |              |                                      |                        |
|   |                        | 由聆訊通知書發出日到聆訊日<br>From notice of hearing to hearing | 目標<br>Target | 2000<br>(截至9月30日)<br>(as at 30 Sept) | 2001<br>(預計)<br>(Plan) |
| 上訴許可申請<br>Applications for leave to appeal from the High Court                | 刑事案件<br>Criminal cases |  | 45           | 32                                   | 36                     |
|   | 民事案件<br>Civil cases    |  | 35           | 40                                   | 25                     |
| 上訴<br>Substantive appeals from the High Court                                 | 刑事案件<br>Criminal cases |  | 100          | 93                                   | 100                    |
|   | 民事案件<br>Civil cases    |  | 120          | 99                                   | 76                     |