

第八章

我們的法官



Chapter 8

OUR JUDGES

司法獨立

司法獨立是香港法制的的首要原則。司法獨立是三權分立的核心概念，三權分立是指司法、行政、立法三者分立並互相制衡。法院在法制中扮演的角色是確保行政行為和立法行為都符合《基本法》和我們的法律。

我們不但要確保司法真正獨立，還要使公眾確信我們的司法是獨立的。在法律前人人是平等的，法官在解決任何市民相互之間或市民與政府之間的糾紛時，都必須不偏不倚。

在所有普通法制度中，近年來法院作為審裁者，解決市民與政府之間的糾紛的工作愈來愈繁重。現代社會日新月異，政府為了公眾利益，有需要對更多的活動，由法律治安，以至金融證券，甚至食物和衛生等進行規管。

司法獨立原則亦保證每一位法官依法斷案，不受干預。儘管法官在法律問題上受上級法院的決定約束，他的判決亦可被上訴，但每宗案件他都有權獨立審判，不受干預。



高等法院上訴法庭法官及原訟法庭法官出席2001法律年度開幕典禮
Justices of Appeal and Judges of the Court of First Instance at the Legal Year Opening 2001

JUDICIAL INDEPENDENCE

The independence of the Judiciary is of fundamental importance in the Hong Kong legal system. Judicial independence is a core element in the concept of the separation of powers. That is, the separation of powers as between the executive authorities, the legislature and the judiciary and involving checks and balances as between them. The courts' role is to act as a safeguard to ensure that executive and legislative action comply with the Basic Law and the law.

An independent Judiciary must be and must be perceived by the public to be independent. Everyone is equal before the law. Judges resolve disputes as between citizens and as between citizen and government in an impartial manner.

In recent times, the courts' role in adjudicating disputes between citizen and government in an impartial manner has become increasingly important in all common law systems. With the growing sophistication of modern society, the government has to play a greater role in regulating various activities in the public interest, ranging from law and order to financial securities and food and hygiene.

The principle of judicial independence also involves the independence of each judge to adjudicate according to law without interference. A judge is bound on matters of law by decisions of the higher courts and his decisions are subject to appeal. But he has the independence to decide each case on his own without interference.



法官及司法人員列席盛典
Judges and Judicial Officers at the important event

保障司法獨立

法官的委任

《基本法》第88條規定，香港特別行政區法院的法官，根據獨立委員會——即司法人員推薦委員會的推薦，由行政長官任命。

根據《司法人員推薦委員會條例》(香港法例第92章)，委員會共有九名委員。除了當然委員外，全部委員都由行政長官委任：

- 法官三人（終審法院首席法官為當然主席）；
- 律師三人（律政司司長為當然委員，另加大律師和律師各一人，後者是經過諮詢兩個業界專業團體理事會後委任的）；及
- 三位業外人士。

在委員會會議中，若有超過兩票否決，決議就不能生效。

SAFEGUARDS FOR JUDICIAL INDEPENDENCE

Appointment of Judges

Article 88 of the Basic Law provides that Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission. This is the Judicial Officers Recommendation Commission.

The Commission as prescribed by the Judicial Officers Recommendation Commission Ordinance (Cap. 92) consists of nine members who, apart from the ex officio members, are appointed by the Chief Executive:

- three Judges (including the Chief Justice as the ex-officio chairman);
- three lawyers (including the Secretary for Justice as the ex-officio member, a barrister and a solicitor who are appointed in consultation with the governing councils of the professional bodies); and
- three persons not connected with the practice of law.

A resolution of the Commission is not effective if there are more than two votes not in favour.

司法誓言

法律規定法官和司法人員就任時必須宣誓，
以下是司法誓言：

**司法誓言**

我謹此宣誓：

本人就任中華人民共和國香港特別行政區法院法官，
定當擁護《中華人民共和國香港特別行政區基本法》，
效忠中華人民共和國香港特別行政區，盡忠職守，奉公守法，
公正廉潔，以無懼、無偏、無私、無欺之精神，維護法制，
主持正義，為香港特別行政區服務。

Judicial Oath

The Judges and Judicial Officers are required
under the law to take the following judicial
oath on their appointment :

**The Judicial Oath**

I swear that, in the Office of a Judge of the Judiciary of
the Hong Kong Special Administrative Region of
the People's Republic of China, I will uphold the Basic Law of
the Hong Kong Special Administrative Region of
the People's Republic of China, bear allegiance to
the Hong Kong Special Administrative Region of
the People's Republic of China, serve the
Hong Kong Special Administrative Region conscientiously,
dutifully, in full accordance with the law, honestly and
with integrity, safeguard the law and administer justice
without fear or favour, self-interest or deceit.



高等法院原訟法庭法官於典禮上準備就座
Judges of the Court of First Instance proceed to take
their seats at the Ceremonial Opening

法官任期的保障和承諾

法官的任期受《基本法》和法例保障。獲委任後，區域法院或更高審級的法官必須向行政長官承諾，任期完結後不會在香港執業為大律師或律師。法官不再與私人執業的法律界有任何關聯，既可防止利益衝突的情況，亦可免公眾疑慮，更可鞏固法官的中立地位，使公眾對法官的中立性更有信心。

法官的免職

《基本法》第 89 條規定，只有在法官無力履行職責或行為不檢的情況下，行政長官才可根據不少於三名由終審法院首席法官任命的、本地法官組成的審議庭提出的建議，予以免職。《基本法》亦規定，只有在終審法院首席法官無力履行職責或行為不檢的情況下，行政長官才可任命不少於五名本地法官組成合議庭，予以免職。

不受法律追究

《基本法》第 85 條規定，司法人員履行審判職責的行為不受法律追究。

Security of tenure and undertaking

The tenure of office of Judges is protected both by the Basic Law and by legislation. Upon their appointment, the District Court Judges and above have to give an undertaking to the Chief Executive that after they have completed their service, they will not practise as a barrister or solicitor in Hong Kong. Such severing of any possible ties with private practice prevents any conflict of interests and any perception of such conflict and enhances the independence of Judges and the perception of such independence.

Removal of judges

Article 89 of the Basic Law provides that a judge may only be removed from office for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice and consisting of not fewer than three local Judges. As for the removal of the Chief Justice, the Basic Law provides that he may only be removed from office for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges.

Immunity from legal action

Article 85 of the Basic Law provides that members of the Judiciary shall be immune from legal action in the performance of their judicial functions.

司法職能

維護法治必須有獨立的司法機構，這是毋庸置疑的。司法機構面臨的挑戰就在於如何在履行職責的同時，贏得社會人士的尊重和信心。

我們能否確保行政行為和立法行為都符合憲法和法律，能否杜絕濫用權力，保障市民的基本權利和自由，完全取決於司法機構是否能發揮其憲制職能。在這方面，法院艱巨的任務是維護《基本法》和法律，使我們這個開明的社會歷久不朽的價值得以存續。這些價值，在許許多多的國際公約裡已獲得承認，而且在我們的《基本法》中莊嚴地刻載著。為了完成重任，無論受到廣泛稱許，或是猛烈抨擊，我們的法官都依法斷案，從不畏懼。

司法機構必須因應社會越來越高的期望，繼續維持和不斷完善法庭制度。法庭時間是有限的社會資源，法官有責任確保這項資源用得其所，而且分配得公平有效。

我們藉以排解糾紛的制度必須公平有效。訟費過高和訴訟遲延是兩個互相交纏，並不容易解決的問題，真正著手解決這些難題而且能解決得好的制度才能稱得上是公平有效的制度。終審法院首席法官已成立工作小組，檢討民事司法制度並進行改革(請參閱第一章)，進入廿一世紀司法工作面對的挑戰波瀾壯闊，這是我們克服高難度的第一步。

ADMINISTRATION OF JUSTICE

The fundamental importance of an independent Judiciary for the maintenance of the rule of law is beyond question. The challenge for the Judiciary is to perform its role in a manner which commands the respect and confidence of society.

The Judiciary has a vital constitutional role to ensure that the Executive and the Legislature act within the Basic Law and the law, that there is no abuse of power and that the fundamental rights and freedoms of citizens are safeguarded. In this area, the challenge for the courts is to uphold the Basic Law and the law and maintain the enduring values of a civil society. These values are recognised in various international covenants and are enshrined in the Basic Law. Our Judges act fearlessly, irrespective of popular acclaim or criticism.

The Judiciary has to maintain and continue to improve the court system so that it meets the rising expectations of society. Court time is a public resource and is limited. Our Judges have to ensure that this public resource is fairly and efficiently allocated and used.

There must be a fair and efficient system for the resolution of disputes. Such a system would have to tackle and tackle successfully the inter-related problems of cost and delay. The Chief Justice established a Working Party to review and reform the Civil Justice System (see Chapter 1), as part of our overall efforts to face exciting challenges in the administration of justice in the 21st century.



終審法院首席法官李國能
The Hon Chief Justice, Mr Andrew Li

各級法院的領導

首席法官

香港《終審法院條例》規定，終審法院首席法官是司法機構的首長，掌管司法機構，履行其他合法委予他的職責，並在終審法院的聆訊中擔任庭長。

李國能法官在1997年7月1日獲委任為香港特別行政區的首任終審法院首席法官。出任此職之前，他一直在香港執業為大律師。

李國能法官1948年在香港出生，持有劍橋大學文學碩士及法學碩士學位。他1970年獲得英國大律師執業資格，1973年獲得香港大律師執業資格，1988年獲委任為御用大律師。

THE COURT LEADERS

The Chief Justice

The Hong Kong Court of Final Appeal Ordinance provides that the Chief Justice shall be the head of the Judiciary and shall be charged with the administration of the Judiciary and such other functions as may be lawfully conferred to him. The Chief Justice presides at hearings in the Court of Final Appeal.

The Honourable Mr Justice Andrew Li was appointed as the first Chief Justice of the Hong Kong Special Administrative Region on July 1, 1997. Before his appointment, Chief Justice Li practised at the Hong Kong Bar.



法官及司法人員出席2001法律年度開幕典禮
Judges and Judicial Officers at the Ceremonial Opening of Legal Year 2001

李國能法官參與公職多年，曾經出任行政局議員，並且曾在多個委員會任職，這包括出任大學及理工教育資助委員會主席、土地發展公司主席、香港科技大學校董會副主席、司法人員敘用委員會成員、法律改革委員會成員和證券事務監察委員會成員。他現時仍為清華大學法律系之友慈善信託基金受託人和清華大學客座教授。

李國能法官曾獲以下院校頒授名譽學位：香港科技大學(1993)、浸會大學(1994)、香港公開大學(1997)、香港大學(2001)及Griffith University (2001)；他又於1997年獲選為中殿法律學院名譽委員，並於1999年獲劍橋大學菲茨威廉學院頒授名譽院士名銜。

Chief Justice Li was born in Hong Kong in 1948. He holds the degrees of Master of Arts and Master of Laws from Cambridge University. He was called to the English Bar in 1970 and the Hong Kong Bar in 1973. In 1988, he was appointed Queen's Counsel.

Chief Justice Li has a long record of public service. He was a member of the Executive Council and had served on many boards and committees including as Chairman of the University and Polytechnic Grants Committee and the Land Development Corporation, as Vice-Chairman of the Council of the HK University of Science and Technology, and as member of the Judicial Service Commission, the Law Reform Commission and the Securities Commission. He is a trustee of the Friends of Tsinghua University Law School Charitable Trust and Guest Professor of that University.

Chief Justice Li's awards include Honorary Degrees awarded by the HK University of Science & Technology (1993); the Baptist University (1994); the Open University of Hong Kong (1997); the University of Hong Kong (2001) and the Griffith University (2001). He was made an Honorary Bencher of the Middle Temple in 1997 and an Honorary Fellow of Fitzwilliam College Cambridge in 1999.

高等法院首席法官

高等法院首席法官是高等法院的首長。現任的梁紹中法官是在2001年1月1日獲委任的。

梁紹中法官1936年在香港出生，1965年於中殿律師學院獲得大律師執業資格。他在1973年加入香港司法機構並出任裁判司，之前曾在當時的香港政府律政署服務。他在1982年獲委任為地方法院法官，1991年獲委任為高等法院（現為原訟法庭）大法官，1997年獲委任為高等法院上訴法庭法官，並且於今年獲委任為高等法院首席法官。

梁紹中法官參與公職和社會服務多年，曾經出任行政上訴委員會主席、文康市政上訴委員會主席和退休公務員就業申請諮詢委員會成員。他現時仍為長期監禁刑罰覆核委員會主席、善導會主席和香港中華基督教會公理堂主席。



高等法院首席法官梁紹中
The Hon Mr Justice Leong, the Chief Judge of the High Court

The Chief Judge of the High Court

The Chief Judge of the High Court is the court leader of the High Court. The Honourable Mr Justice Leong was appointed as the Chief Judge of the High Court on January 1, 2001.

Mr Justice Leong was born in Hong Kong in 1936. He was called to the Bar, Middle Temple in 1965. Before he joined the Hong Kong Judiciary as a Magistrate in 1973, he served in the then Legal Department of the Hong Kong Government. Mr Justice Leong was appointed as District Judge in 1982, as Judge of the High Court (now the Court of First Instance) in 1991 and as Justice of Appeal of the High Court in 1997 before he became the Chief Judge of the High Court this year.

Mr Justice Leong has a long record of public and community service. In the past, he served as the Chairman of the Administrative Appeals Board and the Municipal Services Appeal Board, and as member of the Advisory Committee on Post-Retirement Employment. At present, he is the Chairman of the Long-Term Prison Sentences Review Board, the Hong Kong Society for the Rehabilitation of Offenders and the China Congregational Church, Hong Kong.

區域法院首席法官

區域法院首席法官是區域法院的首長。現任的馮驊法官是在 2001 年 5 月 16 日獲委任的。



區域法院首席法官馮驊
H H Judge Fung, the Chief Judge of the District Court

馮驊法官 1960 年在香港出生，曾在香港華仁書院和澳洲 Barker College 就讀，並持有新南威爾斯大學法學學士學位和香港大學法律專業證書。他 1985 年獲得新南威爾斯大律師執業資格，1986 年獲得香港大律師執業資格。此外，他亦是澳洲 Society of Practising Accountants 和英國 Chartered Institute of Arbitrators 的 Associate。他在 1993 年

加入司法機構並出任裁判官，出任裁判官前，一直從事私人執業。他在 1998 年獲委任為區域法院法官，並且於 2001 年獲委任為區域法院首席法官。

馮驊法官是香港兒童合唱團董事會副主席、香港辯訟學會委員和新南威爾斯大學的 Visiting International Alumni Fellow。

The Chief District Judge

The Chief District Judge is the court leader of the District Court. His Honour Judge Fung was appointed as the Chief District Judge on May 16, 2001.

Judge Fung was born in Hong Kong in 1960. He was educated in Wah Yan College, Hong Kong and Barker College, Australia. He holds the LLB degree from the University of New South Wales and the PCLL degree from the University of Hong Kong. He was admitted as Barrister, New South Wales in 1985, and called to the Hong Kong Bar in 1986. He is also an Associate of the Australian Society of Practising Accountants and the Chartered Institute of Arbitrators, UK. Judge Fung was in private practice before he joined the Hong Kong Judiciary as a Magistrate in 1993. He was appointed District Judge in 1998 before he became Chief District Judge this year.

Judge Fung is also the Vice-Chairman of the Hong Kong Children's Choir, Member of the Board of the Advocacy Institute of Hong Kong and a Visiting International Alumni Fellow of the University of New South Wales.



總裁判官李瀚良先生
Mr Patrick Li, the Chief Magistrate

總裁判官

總裁判官領導各裁判法院、小額錢債審裁處、勞資審裁處、淫褻物品審裁處及死因裁判法庭，是這些法院的首長。現任的李瀚良先生是在 2000 年 10 月 3 日獲委任的。

李瀚良先生 1955 年在香港出生，持有香港大學法學學士學位和法律專業證書，1987 年獲得香港大律師執業資格。

李瀚良先生在 1993 年加入司法機構，之前曾在當時的香港政府律政署工作，他在 1999 年獲委任為主任裁判官，2000 年獲委任為總裁判官。

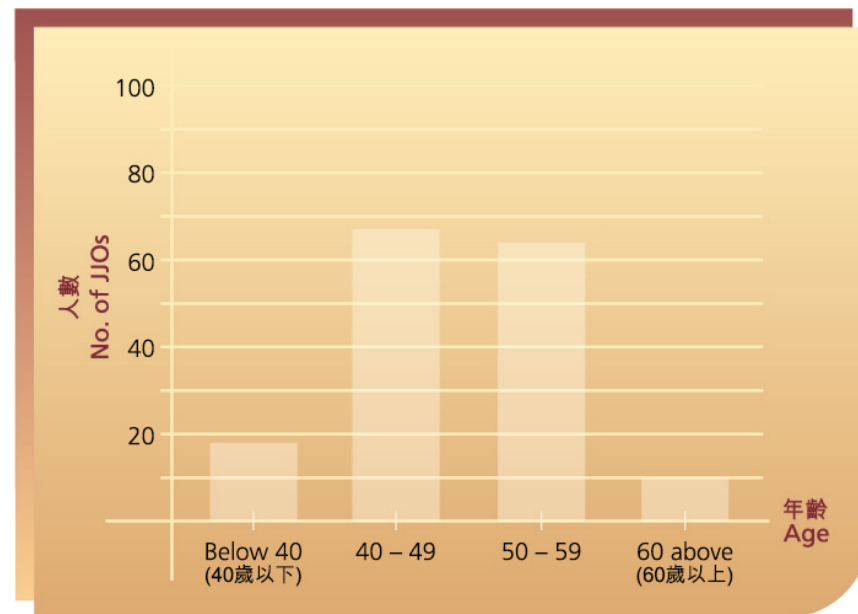
The Chief Magistrate

The Chief Magistrate is the court leader of the Magistrates' Courts and the Small Claims Tribunal, Labour Tribunal, Obscene Articles Tribunal and the Coroner's Court. Mr Patrick Li was appointed as the Chief Magistrate on October 3, 2000.

Mr Patrick Li was born in 1955 in Hong Kong. He holds both the LLB and PCLL degrees from the University of Hong Kong. He was called to the Hong Kong Bar in 1987.

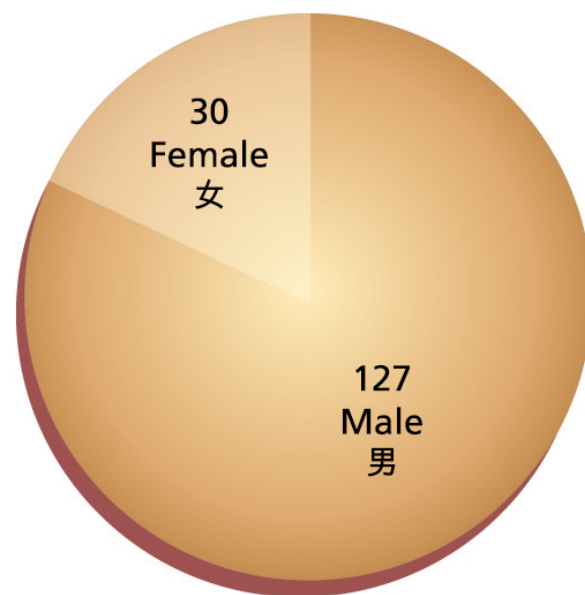
Mr Li worked in the then Legal Department of the Hong Kong Government before he joined the Judiciary in 1993. He was appointed as Principal Magistrate in 1999 and as Chief Magistrate in 2000.

法官和司法人員年齡分佈表
Profile of Judges and Judicial Officers
by Age



至 2001 年 9 月 30 日
as at September 30, 2001

法官和司法人員性別分佈表
Profile of Judges and Judicial Officers
by Sex



至 2001 年 9 月 30 日
as at September 30, 2001

我們的法官

司法機構的法官和司法人員，能幹出色、經驗豐富，而且克盡厥職。至 2001 年 9 月 30 日，我們共有 157 位法官和司法人員，大部分年齡介乎 40 至 59，其中 80% 是男性。

OUR JUDGES

We have a team of competent, experienced and committed Judges and Judicial Officers. As at September 30, 2001, there were 157 Judges and Judicial Officers. The majority are in the age range of 40-59. About 80% are male.

2001 年委任的法官

2001 年，行政長官根據司法人員推薦委員會的推薦，作出了 22 項司法任命。

高等法院及以上審級法院的法官的宣誓就職儀式是由行政長官主持的。2001 年宣誓就職的法官有：艾俊彬爵士（前任新西蘭首席法官）和布仁立爵士（前任澳洲法官）宣誓出任終審法院非常任法官；梁紹中法官宣誓出任高等法院首席法官；張澤祐法官宣誓出任高等法院上訴法庭法官；關淑馨法官宣誓出任高等法院原訟法庭法官；及馬道立法官宣誓出任高等法院原訟法庭法官。

2001 年退休的法官

2001 年，有五位法官和司法人員相繼退休，當中包括高等法院上訴法庭法官王見秋，GBS、高等法院上訴法庭法官祁彥輝、和已故韓敬善法官，BBS。他們多年來在司法機構服務，不遺餘力，表現卓越。



終審法院首席法官歡送九月榮休的上訴法庭法官王見秋（左二）
The Chief Justice hosts a farewell dinner for the Hon Mr Justice Wong,
Justice of Appeal (second left), who retires in September

APPOINTMENTS IN 2001

In 2001, 22 judicial appointments were made by the Chief Executive in accordance with the recommendations of the Judicial Officers Recommendation Commission.

Swearing-in of Judges at the High Court and above is administered before the Chief Executive. In 2001, the following Judges were sworn in: the Rt Hon Sir Thomas Eichelbaum (former Chief Justice of New Zealand) and the Hon Sir Gerard Brennan (former Justice of Australia) as Non-permanent Judge of Court of Final Appeal; the Hon Mr Justice Arthur Leong as the Chief Judge of the High Court; the Hon Mr Justice Peter Cheung as Justice of Appeal of the Court of Appeal of the High Court; the Hon Madam Justice Susan Kwan as Judge of the Court of First Instance of the High Court; and the Hon Mr Justice Geoffrey Ma as Judge of the Court of First Instance of the High Court.

RETIREMENTS IN 2001

After many years of dedicated and distinguished service, five Judges and Judicial Officers retired from the Judiciary. Among them are the Hon Mr Justice Wong, GBS; the Hon Mr Justice Keith, Justice of Appeal of the Court of Appeal of the High Court and the late His Honour Judge Richard Neville Hawkes, BBS.