



第二章 2

終審法院
*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 Andrew Kwok-nang Li (second right) with Permanent Judges of the Court of Final Appeal (from right): the Hon Mr Justice Chan, the Hon Mr Justice Bokhary and the Hon Mr Justice Ribeiro

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2003年9月30日,終審法院共有八位本地和十位來自其他普通法適用地區的非常任法官。



郭樂富先生宣誓出任終審法院非常任法官
Mr Philip Gerard Clough swears in as Non-permanent Judge of the Court of Final Appeal

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 2003, there are eight Non-Permanent Hong Kong Judges and 10 Non-Permanent Judges from other common law jurisdictions in the panel.



施廣智勳爵宣誓出任終審法院非常任法官
The Rt Hon the Lord Scott of Foscote swears in as Non-permanent Judge of the Court of Final Appeal

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

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倫敦市長艾敬勳爵士（左一）會面
 The Chief Justice meets with the Rt Hon Alderman Gavyn Arthur, the Lord Mayor of London (first left)



立法會議員訪問終審法院並與終審法院首席法官會面
 Members of the Legislative Council visit the Court of Final Appeal and meet with the Chief Justice



- 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
 - i 就 ——
 - (A) 根據《高等法院條例》第21K條提出的司法覆核申請；或
 - (B) 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。
- 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.



終審法院首席法官出席在日本舉行的第十屆亞太區首席法官會議時與最高人民法院院長蕭揚（中）及澳門特別行政區終審法院院長岑浩輝（右）合照
 The Chief Justice attends the 10th Conference of the Chief Justices of Asia and the Pacific in Japan. With him are Mr Xiao Yang, President of the Supreme People's Court (middle) and Mr Sam Hou Fai, President of the Court of Final Appeal of the Macau Special Administrative Region (right)



終審法院首席法官與日本最高裁判所判事上田豐三會面
The Chief Justice and Justice Toyozo Ueda, Supreme Court of Japan

越級上訴程序

《香港終審法院(修訂)條例》於2002年5月30日制定，並於2002年12月2日實施。該條例讓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：

- 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



終審法院首席法官與參加亞洲區律師會會長會議的代表會面
The Chief Justice and the delegates to the Presidents of Law Associations Conference

Leapfrog Appeals

The Hong Kong Court of Final Appeal (Amendment) Ordinance was enacted on 30 May 2002 and came into operation on 2 December 2002. The purpose of the Ordinance is to provide for a leapfrog procedure by which 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 will be an exceptional one. The Court of Final Appeal will have to grant leave, and the Court of First Instance will have 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;

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（並非陪審團作出的裁定或裁決），但不能向上訴法庭提出上訴。



終審法院常任法官包致金(右)與英格蘭及威爾斯檢察長御用大律師祈富文爵士會面
The Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal (right), and Sir David Calvert-Smith, Q.C., Director of Public Prosecutions of England and Wales



終審法院常任法官包致金(左)與德國總統 Johannes Rau 會面
The Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal (left), and Mr Johannes Rau, Federal President of the Federal Republic of Germany

- 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.

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.



終審法院常任法官陳兆愷（右一）與德國歌德學院會長 Jutta Limbach 教授（左一）會面
The Hon Mr Justice Chan, Permanent Judge of the Court of Final Appeal (first right), meets with Professor Jutta Limbach, President of the Goethe-Institut Inter Nationes, Germany (first left)

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。

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。

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。

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.



終審法院常任法官包致金（右）與「大不列顛—中國研究中心」會長賀維勳爵會面
The Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal (right), and Lord Howe, President of the Great Britain - China Centre

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.

首席法官為合議庭庭長，若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
Court of Final Appeal Registry

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。

隨著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改善。

案件量及輪候時間

與 2002 年相比，2003 年終審法院要處理的上訴許可申請數量保持穩定，而上訴案數量則估計會增加 1.5%。由於案件量有所增加，我們在案件輪候時間方面不一定能達到定下的目標。但是，司法機構會竭力縮短案件輪候時間。

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, our staff has to devote more efforts in explaining to them the necessary court procedures to follow.

With the establishment of a computerized 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 significantly improved.

CASELOAD AND WAITING TIME

The caseload in respect of applications for leave remains steady whilst substantive appeals in 2003 is estimated to increase by 15% when compared with those of 2002. The target waiting times may not be met due to the increase in caseloads. The Judiciary will make every effort to improve the court waiting times.

表 1 終審法院的案件量
Table 1 CASELOAD OF THE COURT OF FINAL APPEAL

| | | 2002 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 | 3 | 36 | 36 (24) | 0 | 3 |
| | 民事 Civil | 5 | 53 | 33 (21) | 0 | 25 |
| 合計 TOTAL | | 8 | 89 | 69 | 0 | 28 |
| 不服高等法院判決而提起的上訴 Substantive appeals from the High Court | 刑事 Criminal | 3 | 6 | 6 | 0 | 3 |
| | 民事 Civil | 10 | 16 | 15 | 0 | 11 |
| 合計 TOTAL | | 13 | 22 | 21 | 0 | 14 |

**2003 (截至 9 月 30 日 up to 30 Sept)
案件數目 No. of Cases**

| | | 2003 (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 | 3 | 39 | 33 (18) | 0 | 9 |
| | 民事 Civil | 25 | 26 | 46 (32) | 0 | 5 |
| 合計 TOTAL | | 28 | 65 | 79 | 0 | 14 |
| 不服高等法院判決而提起的上訴 Substantive appeals from the High Court | 刑事 Criminal | 3 | 6 | 6 | 0 | 3 |
| | 民事 Civil | 11 | 13 | 12 | 0 | 12 |
| 合計 TOTAL | | 14 | 19 | 18 | 0 | 15 |
| 雜項程序@ Miscellaneous proceedings | | 0 | 2 | 2 | 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

* 結案是指上訴許可申請/上訴得直、駁回、撤回、放棄或終止
括號內的數字是根據《終審法院規則》(第 484A 章) 第 7 條被駁回的案件的數目
Disposed of refers 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
Inactive refers 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 終審法院案件輪候時間
Table 2 WAITING TIME FOR CASES IN THE COURT OF FINAL APPEAL

| | | 輪候時間(日) Waiting Time (days) | | | |
|--|--|--------------------------------|------|---|------------------------|
| | | 目標 Target | 2002 | 2003 (截至 9 月 30 日止 as at 30 Sept) | 2004 (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 | 40 | 51 | 45 |
| | • 民事案件 Civil cases | 35 | 52 | 46 | 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 | 83 | 91 | 100 |
| | • 民事案件 Civil cases | 120 | 63 | 120 | 120 |