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司法機構的使命，是維持一個獨立而具至高專業水平的司法制度：維護法治，保障個人權利和自由及取得港人及國際人士對本港司法制度的信任。

The Mission of the Judiciary is to maintain an independent and competent judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual, and commands domestic and international confidence.

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## 終審法院首席法官

### 撰文

## Message from the Chief Justice

自從香港回歸祖國，成立中華人民共和國香港特別行政區以來，香港司法機構仍然獨立有效地運作，普通法一直持續振興發展。

香港終審法院，這個屬於我們自己的，有最終審判權的上訴法院，全面運作，一切順暢。自1997年7月以來，在新的制度下，在憲制發展的過程中，我們面對著嚴峻的考驗。過去三年半以來，法院，尤其是終審法院，曾就多項重大憲制爭議作出了判決。不論審理結果如何，法院所作出的這些判決都難免會引起爭論，這是所涉爭議的性質使然；社會各方曾就這些判決展開過激烈的辯論，這是理所當然的。對法院判決的監察權利是憲法賦予公民的權利，在自由社會裡應當得以充分地、但認真地行使。

未來數年，法院將要繼續處理充滿挑戰的憲制爭議。儘管我們的制度是建基於「一國兩制」這麼一個創新的概念，我們的憲制也只能隨著時間逐漸發展起來，在發展的過程中，法院的難題，就在於如何維護基本法及保留

Since our re-unification with the Motherland and the establishment of the Hong Kong Special Administrative Region of the People's Republic of China, the independent Judiciary has continued to operate effectively and the common law has continued to thrive.

The Court of Final Appeal, our own final appellate court, is functioning smoothly. In the new order since July 1997, we face exciting challenges in the development of constitutional jurisprudence. During the past three and a half years, the courts, in particular the Court of Final Appeal, decided a number of important constitutional issues. By reason of their subject matter, these judgments were inevitably controversial, whatever the outcome. They have been vigorously debated in the community as they should be. The right to scrutinise judgments of the courts is a constitutional right which should be vigorously and responsibly exercised in a free society.

In the coming years, the courts will continue to face challenging constitutional issues. With as imaginative and innovative a concept as "one country, two systems", the jurisprudence could only develop over time. In this difficult area, the challenge for the courts is to uphold the Basic Law and maintain

這個開明的社會固有的價值。至於維持法治，司法機構矢志力行，我深信法治在香港必將繼續蓬勃發展。

法治社會的法律制度必須能確保公民訴訟有門、保證他們只要付出合理的費用，其糾紛就可以在合理的時間內得到公平裁決。若要不負社會對我們的期望，則必須確保法院在解決市民相互之間或市民與政府之間的糾紛時，既公正不阿，又符合省錢、省時、省事的原則。人們尋求公義若要付出無法承擔的費用、又要耗時費事，就等於被剝奪公義。

有見及此，我已委派了由陳兆愷法官領導的一個工作小組，負責檢討高等法院的民事訴訟規則和程序並探索改革方案，以保證訴訟之門更加廣開，讓市民能以公道的訟費，在合理的時間內在法院尋得公道。工作小組現正深入研究各項有關事宜，並有穩定的進展。至於區域法院方面，我喜見期待已久的《區域法院（修訂）條例》終於在2000年9月1日生效，擴大了這審級的民事管轄權。這修訂條例引起的影響和區域法院新的規則應用的情況，我們都在密切注視。此外，我們又在不斷監督和檢討其他法院和審裁處的運作情況，務求作進一步改善。

the enduring values of a civil society enshrined therein. The Judiciary is determined to maintain the rule of law in Hong Kong which I am fully confident will continue to thrive in its full vigour.

In a society governed by the rule of law, the legal system must ensure that the citizen has access to justice at reasonable cost and speed. To meet community expectations, we must ensure that the court system is able to resolve disputes between citizen and citizen and between citizen and Government, not only fairly but also economically and expeditiously. Justice which is not affordable or delayed will amount to a denial of justice.

To this end, I have appointed a Working Party under the Chairmanship of The Hon Mr Justice Patrick Chan to conduct a review of the civil rules and procedures of the High Court and to consider changes with a view to ensuring and improving access to justice at reasonable cost and speed. The Working Party is studying the issues and is making steady progress. At the District Court level, I am pleased to see that the long overdue District Court (Amendment) Ordinance came into effect on 1 September 2000 increasing its civil jurisdictional limits. We are now actively monitoring its impact and the working of the new District Court rules. We are also constantly monitoring and reviewing the operation of other courts and tribunals with a view to bringing about further improvements.

2000年，我們一如過往仍非常重視專業發展。獨立性、具誠信、精於法律，是司法制度必具的特質，我們為確保我們司法制度的本質維持不變，不遺餘力。關於這方面，「司法培訓、與其他司法管轄區的互聯」一章總結了我們在司法培訓方面所作的努力。展望將來，我們會加強持續和優質的司法培訓，為進一步提升專業水平而努力。

至於如何面對社會對我們愈來愈多也愈來愈高的期望，我們極注重從與公眾和法庭使用者進行有效和有建設性的溝通著手。「與法庭使用者以及社會大眾的互聯」一章已專門詳述。我們在履行職務時也必須與時並進，精益求精。

社會的需要不可能永遠不變，作為服務社會的機構，我們決意積極配合這種改變。我們的承諾是，堅決維持司法制度的獨立和專業性，從而維護法治，保障個人權利和自由。

李國能

終審法院首席法官  
李國能

In 2000, we have continued to attach great importance to professional development and we are doing our utmost to ensure that the Judiciary maintains the vital qualities of independence with integrity and professional competence. In this regard, our efforts in judicial training have been summarised under the Chapter on "Judicial Development and Interface with Other Jurisdictions". Looking ahead, we will continue to step up our efforts in enhancing professional competence through continuous and quality judicial development and training.

In the context of rising expectations of the community, we attach increasing importance to establishing effective and constructive communications with court users and the community. In this report, we have devoted a separate Chapter on "Interface with Court Users and the Community". We need to keep abreast with changing times and to strive for excellence in the discharge of our duties.

The Judiciary is determined to respond positively to the changing needs of the community which we serve. Our pledge is to maintain an independent and competent judicial system which upholds the rule of law and safeguards the rights and freedom of the individual.

Andrew Li

Andrew Li  
Chief Justice



第一章

# 終審法院

CHAPTER 1

# Court of Final Appeal





## 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，可以確認、推翻或更改各下級法院的判決。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章列明終審法院的法庭程序。

終審法院的首長是終審法院首席法官，其他成員包括三位常任法官、十二位非常任香港法官和九位來自其他普通法適用區的非常任法官。終審法院審理上訴案件，由五位終審法院法官組成審判庭進行；按照需要，邀請一位非常任香港法官或一位其他普通法適用地區的非常任法官共同審理。

## COURT OF FINAL APPEAL

The Court of Final Appeal was established on 1 July 1997. It was established 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 Rules of the Court of Final Appeal (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. 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.



終審法院首席法官李國能主持2000年法律年度開啟典禮  
The Hon Chief Justice Mr Andrew Li officiating at the Ceremonial Opening of Legal Year 2000



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 to left): Chan, Bokhary and Ribeiro.



傅雅德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, Mr Kutlu Fuad swearing-in to become Non-Permanent Judge of the Court of Final Appeal



邵淇宣誓  
Mr William Silke swearing-in



苗禮治勳爵宣誓  
Lord Millett swearing-in



赫健士爵士宣誓  
Sir Alan Huggins swearing-in



羅弼時爵士宣誓  
Sir Denys Roberts swearing-in





### 民事管轄範圍

法律規定，不服上訴法庭最後判決而爭議數額達100萬元或以上的民事案件，可向終審法院提起上訴。

至於其他民事爭議，範圍由上訴法庭或終審法院酌情決定。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。

### JURISDICTION IN CIVIL MATTERS

An appeal shall lie to the Court of Final Appeal in any civil cause or matter as of right, from any final judgment of the Court of Appeal, where the matter in dispute amounts to or is of the value of \$1,000,000 or more.

In other civil matters, the appeal is at the discretion of the Court of Appeal or the Court of Final Appeal, 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.



終審法院首席法官(左二)、終審法院常任法官包致金(左一)與澳門特別行政區終審法院院長岑浩輝(右中)會面

*The Chief Justice (second left) and The Hon Mr Justice Bokhary, Permanent Judge of The Court of Final Appeal (first left), with Mr Sam Hou Fai, President of the Court of Final Appeal of the Macau Special Administrative Region (middle right)*



終審法院首席法官與加拿大最高法院首席法官 Beverley McLachlin 會面

*The Chief Justice and The Rt Hon Madam Chief Justice Beverley McLachlin of the Supreme Court of Canada*



終審法院首席法官會見美國聖地亞哥聯邦上訴法院第九巡迴審判庭法官 (United States Ninth Circuit Court of Appeals) The Hon J. Clifford Wallace (中)  
The Chief Justice and The Hon J Clifford Wallace, United States Ninth Circuit Court of Appeals, San Diego (centre)



終審法院首席法官與英國上議院大法官艾偉儀勳爵會面  
The Chief Justice and the Britain's Lord Chancellor, Lord Irvine of Lairg

我們現正計劃，向立法會建議引進一項越級程序，使不服高等法院原訟法庭某些民事判決的上訴人，可以無需經過上訴法庭，直接向終審法院提起上訴。這項程序是特殊程序，只適用於極少數能符合越級條件的案件，其主要的優點是，如果用得其所，可加快訴訟過程。有關部門打算 2001 年向立法會提交這項建議。

We are working on a legislative proposal to introduce a leapfrog procedure to enable certain civil appeals to be made to the Court of Final Appeal direct from the Court of First Instance of the High Court, thus bypassing the Court of Appeal. The procedure will be an exceptional one and will only apply to a very limited number of cases which can fulfil the leapfrog criteria. The main advantage of the procedure is the potential for speeding up the process of litigation, where it can appropriately be done. It is intended that the legislative proposal will be put to the Legislative Council in 2001.



終審法院首席法官與 Lord Woolf 會面  
The Chief Justice and Lord Woolf

### 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。

### 上訴許可

上訴委員會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。上訴委員會專門審理上訴許可申請，其決定是最終決定，不得上訴。

### 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.

### LEAVE TO APPEAL

The Appeal Committee consists of the Chief Justice and two permanent judges nominated by the Chief Justice; or three permanent judges nominated by the Chief Justice. It hears and determines applications for leave to appeal. The decision of the Appeal Committee is final and is not itself subject to appeal.



## 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。該處的電腦化過程已經在1999年12月完成，這是司法機構資訊系統策略第三期的一部分。終審法院登記處的電腦系統，跟其他各級法院的一樣，提供周全的案件管理服務。電腦化完成後，終審法院的案件管理系統可以與上訴法庭和原訟法庭的系統互聯。現時，無論提取檔案或查看案件進度都更為快捷。此網絡也大大方便了案件的排期工作，並且有助迅速編製重要的管理資料。

## 案件量和輪候時間

這幾年來，上訴許可申請的數量一直相當穩定。

## THE COURT OF FINAL APPEAL REGISTRY

The Registry of the Court of Final Appeal is responsible for the filing and maintenance of records in action in the Court of Final Appeal. The computerisation of the registry, which is part of the Judiciary Information Systems Strategy Phase III projects, has been completed in December 1999. It provides a comprehensive case management service as in other levels of courts. Upon computerisation, a case management network with the Court of Appeal and the Court of First Instance is also established. Retrieval of files and checking of progress can now be done more efficiently. It can also serve as an effective tool in facilitating listing of cases and producing essential management information.

## CASELOAD AND WAITING TIME

Regarding the application for leave to appeal, the caseload remains quite steady throughout the years.



烈顯倫法官十月在榮休儀式後與終審法院首席法官李國能、終審法院常任法官包致金合照(相片由蘋果日報提供)  
The Hon Chief Justice Mr Andrew Li and Mr Justice Bokhary bidding farewell to Mr Justice Litton after the latter's retirement sitting held in October (Picture by Apple Daily)



已故沈澄法官  
The late Justice Ching



估計 2000 年將會有 40 宗上訴入稟終審法院，比 1999 和 1998 年分別多百份之三十八和百份之二十一。1997 年 7 月至 2000 年 9 月期間，入稟終審法院的上訴共 97 宗。

It is estimated that about 40 substantive appeals will be filed with the Court of Final Appeal in 2000, representing an increase of 38% and 21% over those filed in 1999 and 1998 respectively. During the period between July 1997 and September 2000, 97 substantive appeals were filed with the Court.



終審法院首席法官訪問加拿大最高法院  
The Chief Justice visiting the Supreme Court of Canada



終審法院首席法官與廣東省高級人民法院院長呂伯濤(中)會面  
The Chief Justice and Mr Lu Baotao (centre), President of Guangdong Provincial Higher People's Court



終審法院首席法官(後起第二排右一)出席美國耶魯大學舉行的全球憲制研討會(Global Constitutionalism Seminar)  
The Chief Justice (1st right 2nd last row) attending the Global Constitutionalism Seminar at Yale Law School



終審法院首席法官與全國人大常委會法制工作委員會副主席喬曉陽(左)會面  
The Chief Justice and Mr Qiao Xiaoyang, Vice-Chairman of Legislative Affairs Commission of the Standing Committee of the National People's Congress (left)



表 1  
Table 1

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

		1999 案件數目 No. of Cases				
		承接往年 <sup>△</sup> 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起的上訴 許可申請 Applications for leave to appeal from the High Court	刑事 Criminal	8	37	35	0	10
	民事 Civil	2	31	23	0	10
<b>合計 TOTAL</b>		<b>10</b>	<b>68</b>	<b>58</b>	<b>0</b>	<b>20</b>
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	4	9	9	0	4
	民事 Civil	14	20	21	0	13
<b>合計 TOTAL</b>		<b>18</b>	<b>29</b>	<b>30</b>	<b>0</b>	<b>17</b>

  

		2000 (截至 9 月 30 日 up to 30.9.2000) 案件數目 No. of Cases				
		承接往年 <sup>☆</sup> 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起的上訴 許可申請 Applications for leave to appeal from the High Court	刑事 Criminal	10	17	25	0	2
	民事 Civil	10	28	32	0	6
<b>合計 TOTAL</b>		<b>20</b>	<b>45</b>	<b>57</b>	<b>0</b>	<b>8</b>
不服高等法院判決而提起的上訴 Substantive appeals from the High Court	刑事 Criminal	4	7	4	0	7
	民事 Civil	13	23	16	0	20
<b>合計 TOTAL</b>		<b>17</b>	<b>30</b>	<b>20</b>	<b>0</b>	<b>27</b>

<sup>△</sup> 承接往年的案件指訴訟中止及訴訟進行中的案件。這些案件在 1999 年首次如此分類  
The figures brought forward from previous years refer to cases inactive and in progress. It is the first year to  
categorise the cases brought forward into inactive and in progress in 1999

<sup>☆</sup> 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 to 2000 refer to cases in progress and do not include cases inactive

\* 結案指上訴得直、駁回、撤回、放棄或終止  
Disposed of refers to appeals allowed, dismissed, withdrawn, abandoned or discontinued

# 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 2  
Table 2

終審法院案件的輪候時間  
WAITING TIME FOR CASES IN THE COURT OF FINAL APPEAL

	輪候時間 (日) Waiting Time (days)			
	目標 Target	1999	2000 (截至 9 月 30 日 as at 30.9.2000)	2001 (預計 Plan)
上訴許可申請 Applications for leave to appeal from the High Court				
• 刑事案件 Criminal cases	45	37	31	45
• 民事案件 Civil cases	35	44	41	35
上訴 Substantive appeals from the High Court				
• 刑事案件 Criminal cases	100	103	105	100
• 民事案件 Civil cases	120	97	99	120