Judiciary of Hong Kong

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The **Judiciary of the Hong Kong Special Administrative Region** is the judicial branch of the Hong Kong Special Administrative Region. Under the Basic Law of Hong Kong, it exercises the judicial power of the Region and is independent of the executive and legislative branches of the government. It consists of the Court of Final Appeal, adjudicative tribunals and the Judiciary, including all judges and adjudicators.

It is fundamental to the Hong Kong legal system that members of the judiciary are independent of the executive and legislative branches. The courts of law in Hong Kong comprise the Court of Final Appeal, the High Court (which includes the Court of Appeal and the Court of First Instance), the District Court, the Magistrates' Courts, and other special courts and tribunals set up by law. The Chief Justice of the Court of Final Appeal is head of the judiciary and assisted in his administrative duties by the Judiciary Administrator. A bilingual legal system in which Chinese, English or both can be used may be in place, in accordance with the requirement of the Basic Law.

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The Court of Final Appeal

Main article: Court of Final Appeal (Hong Kong)

The Court of Final Appeal was established on 1 July 1997 upon the commencement of the Hong Kong Court of Final Appeal Ordinance (adopted the rule of law after 30 June 1997. It replaced the Judicial Committee of the Privy Council in London as the highest appellate court of Hong Kong. The Court comprises five judges – the Chief Justice, three permanent judges and one non-permanent judge from Hong Kong or another common law jurisdiction. There is a panel of eight non-permanent Hong Kong judges and nine non-permanent judges from other common law jurisdictions.

The High Court

Main article: High Court (Hong Kong)

The High Court was established by the High Court Ordinance (Chapter 4, formally titled the "Supreme Court Ordinance"), as the "Supreme Court of Hong Kong" on 1 April 1844 (Hong Kong Day). It is the Basic Law of Hong Kong. It consists of the Court of Appeal and Court of First Instance (formally "The High Court of Justice"), both are superior courts of record.

The Court of Appeal

Main article: Court of Appeal (Hong Kong)

It hears appeals on civil and criminal matters from the Court of First Instance and the District Court, as well as appeals from the Lands Tribunal. It also makes rulings on interpretation of the Basic Law, the Bill of Rights and the rule of law. It consists of judges, including the Chief Judge of the High Court and three Vice-Presidents.

The Court of First Instance

Main article: Court of First Instance (Hong Kong)

It has unlimited jurisdiction in both civil and criminal matters. It also exercises jurisdiction in admiralty, bankruptcy, company winding-up, and probate and probate matters. The most serious criminal offences, such as murder, manslaughter, rape, armed robbery, complex commercial frauds and drug offences involving large quantities, are tried by a judge of the Court of First Instance, sitting with a jury consisting of seven or, when a judge so orders, nine. There are approximately 42 Judges and Deputy Judges of the Court of First Instance.

Statue of Themis on the Court of Final Appeal Building

The District Court

Main article: District Court (Hong Kong)

The District Court, established in 1953, is the intermediate court of Hong Kong. It has limited jurisdiction in both civil and criminal matters. With effect from 1 December 2008, it has civil jurisdiction to hear claims up to HK$1.000.000 million, or where the claim are for the recovery of land, of which the annual rent or rateable value does not exceed $320,000. In its criminal jurisdiction, the court may try the more serious cases, with the main exception of murder, manslaughter and rape. The maximum term of imprisonment it may impose is seven years. There are one Chief District Judge and 26 District Judges, among which three District Judges act as Deputy Chief Judges and seven Judges sit in the Lands Tribunal as Presiding Officers.

The High Court in Admiralty

Forms of Address

District Judges are always referred to directly in court as "Your Honour", and indirectly jointly or in writings as "His/Her Honour Judge ...". The Chief District Judge may be referred to in writing by adding the post-nominal "CDJ" and the Principal Family Court Judge by adding the post-nominal "PFJ". (District Court Judges are referred to in writing by adding the pre-nominal "HH ...".

Deputy District Court Judges may be referred to directly in court as "Your Honour" but indirectly jointly or in writing they are referred to as "Deputy District Judge ...".

The location of courts in Hong Kong

Family Court

The Family Court is a division of the District Court which is assigned by the Chief Justice to deal with family cases. Under section 104 of the Matrimonial Causes Ordinance (Cap 179), all family and matrimonial proceedings connected to the District Court jurisdiction are assigned to the Family Court. A Family judge may transfer a case to the High Court if it involves high monetary value claims and/or highly complex matters of fact or law. By section 104(4) of the Matrimonial Causes Ordinance, the Family Court may exercise jurisdiction exceeding the District Court's monetary limits.

The Magistrates' Courts

Magistrates exercise criminal jurisdiction over a wide range of offences. Magistrates can impose fines and two years imprisonment for a fine of $500,000; certain statutory provisions give Magistrates the power to sentence up to three years imprisonment and to impose a fine up to $5,000,000. Prosecution of all indictable offences commences in the Magistrate Courts, the Secretary for Justice may apply to have a case transferred to the District Court or committed to the Court of First Instance of the High Court depending on the seriousness of a case. There are approximately 70 Magistrates, sitting in various Tribunals and seven Magistrate Courts: Eastern, Kowloon City, Sheung Wan, Sha Tin, Tsuen Wan, Tuen Mun, and Tsing Yi Island. The Principal Magistrate is the head of the Magistrates' Courts. The Principal Magistrate's chambers is at the Kowloon City Law Courts Building, overseen the work of all magistrates. The most junior judicial rank is that of Special Magistrate, typically double only with minor offences such as hawking contraventions, traffic offences and other departmental summonses. Appeals against Magistrates' decisions are heard by a Judge of the Court of First Instance.

Fanling Magistrates' Court

Forms of Address

The magistrate are always referred to in court as "Sir" or "Madam" or "Your Worship". Barristers do not generally use the latter to refer to magistrates. In this context, the phrase "Your Worship" is not derived from any ordinary meaning but from the Latin word meaning 'worth / respect'.

The Chief Magistrate may be referred to in writing by adding the post-nominal 'CM', and the Principal Magistrate (sending every a particular magistrate court) may be referred to in writing by adding the post-nominal 'PM'.

The Juvenile Court

Courts exercising juvenile jurisdiction are constituted, as the need arises, under the Juvenile Offenders Ordinance (Cap.226) and other statutes. A juvenile court has exclusive jurisdiction to hear charges against children (aged under 14) and young persons (aged between 14 and 16) for any offence other than homicide. Children under 10 are exempted from criminal responsibility. It also has power to deal with care and protection cases involving young people aged up to 18.

A permanent magistrate may sit as a juvenile court and special procedures apply. The magistrate explains the alleged offence to the child or young person in simple language and provides assistance to the defendant in the conduct of the case. Press coverage of the proceedings in juvenile court is restricted, preserving disclosure of the identity of the defendant. The Juvenile Court sits in the Eastern, Kowloon City, West Kowloon, Fanling and Tuen Mun Magistrate Courts.

Special courts and tribunals

The Coroner's Court

Coroners are empowered to investigate unnatural or suspicious deaths occurring in Hong Kong and deaths occurring outside Hong Kong if the body is found within Hong Kong. Except when death occurs while the deceased is in custody, or the Secretary for Justice directs, the Coroner decides whether or not to hold an inquest with or without a jury. The inquest is mandatory with a jury where the death occurs in custody. The purpose of an inquest is to ascertain the cause of and the circumstances connected with the death. If appropriate, a Coroner or a jury may make recommendations designed to prevent the recurrence of the fatality under investigation. The Court is situated at West Kowloon Law Courts Building.

The Lands Tribunal

Main article: Lands Tribunal (Hong Kong)

One of the important functions of the Lands Tribunal is to adjudicate claims by landlords for possession of premises, the resolution of rent reviews and claims for rent under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). Starting from 3 July 2004, the Tribunal also has power to adjudicate claims for possession of premises, the tenancies or sub-tenancies of which have expired by effluxion of time even when they are outside the said Ordinance. The Tribunal also has power to grant consequential relief. Another widely used jurisdiction of this Tribunal is to determine building management disputes. Such disputes arise from, among others, the interpretation and enforcement of the provisions of the Building Management Ordinance (Cap. 344) and deeds of mutual covenant, the appointment or dissolution of management committees, regulations for owners' meetings and appointment of building management agent. The Tribunal also has unlimited jurisdiction to determine the amount of compensation payable by the Government to a person whose land has been compulsorily resumed under the Lands Resumption Ordinance (Cap. 124). In compulsory resumption, the Tribunal can also order the sale of land for redevelopment by agreement under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545). The Tribunal also exercises appellate jurisdiction over determinations by the Commissioner of Rating and Valuation under the Rating Ordinance (Cap. 116), (b) determinations by the Director of Lands under the Government Rent (Assessment and Collection) Ordinance (Cap. 515), and (c) determinations by the Director of Housing under the Housing Ordinance (Cap. 283). In exercising its jurisdiction, the Tribunal has the same powers to grant remedies and relief, legal or equitable, as the Court of First Instance of the High Court. Parties may appoint counsel or solicitors to appear before the Tribunal or, as it often the case, they may appear in person. The Tribunal also President who is a Judge of the Court of First Instance. There are currently two Presiding Officers who are District Judges, and three members.

The Lands Tribunal in Wanchai Hong Kong Harbour

The Labour Tribunal

The Labour Tribunal was set up in 1973 to provide a speedy, inexpensive and informal forum for adjudicating disputes between employers and employees. It deals with claims arising out of a breach of a contract of employment. Claims may include wages in lieu of notice, arrears of wages, statutory holiday pay, annual leave pay, sickness allowance, maternity leave pay, bonus/double pay, severance pay, and long service payments. Claimants can also seek orders for reinstatement or re-engagement, for awards of compensation or terminal payments. Proceedings are mainly conducted in Cantonese before a Presiding Officer. Legal representation is not allowed. Any party aggrieved may appeal on a point of law to the Court of First Instance of the High Court. There are two Presiding Officers, including one Principal Presiding Officer. The tribunal is located at the South Kowloon Law Courts Building in Gascoigne Road. Its statistics are provided by the Judiciary on actual waiting times from filing of a claim to first day of trial or ultimate resolution.[1]

The Small Claims Tribunal

The Small Claims Tribunal was established in 1976. It deals with monetary claims arising from contract or tort, including amounts not exceeding HK$50,000. Strangers are informal and usually conducted in Cantonese. Legal representation is not allowed. Parties may authorise a representative (other than a lawyer) to appear in court. Any party aggrieved by the decision of an Adjudicator may appeal on a point of law to the Court of First Instance. There are approximately nine Adjudicators, including a Principal Adjudicator. The Small Claims Tribunal is situated at West Kowloon Law Courts building.

The Obscene Articles Tribunal

The Control of Obscene and Indecent Articles Ordinance came into force in 1987 providing for the establishment of the Obscene Articles Tribunal. The work of this tribunal centers into two aspects. Firstly, it is responsible for the classification of articles submitted by any public officer, author, printer, manufacturer, publisher, distributor, copyright owner etc. Secondly, the tribunal has exclusive jurisdiction to determine the question of obscenity or indecency when this issue arises in any civil or criminal proceedings in any court. The Obscene Articles Tribunal consists of a Magistrate and two or more lay adjudicators. Lay adjudicators are selected from a panel consisting of members of the public. The tribunal is situated at West Kowloon Law Courts Building.

Appointment of Judges and Judicial Officers

Judges and judicial officers are appointed by the Chief Executive of the HKSAR after receiving secret advice and recommendation from the Judicial Officers Recommendation Commission. The Judicial Officers Recommendation Commission is chaired by the Chief Justice of the Court of Final Appeal. Court of First Instance, District Court, Family Court, Magistrates' Courts, Lands Tribunal, Labour Tribunal, Small Claims Tribunal, Coroners' Courts and Competitions Tribunal. The Commission is a statutory body established under the Judicial Officers Recommendation Commission Ordinance and composed of the Chief Justice, Secretary for Justice (themselves appointed to office by the Chief Executive) and seven others appointed by the Chief Executive of the HKSAR two judges, one barrister, one solicitor and three other persons unconnected with legal practice. Appointed members serve terms of two years and can be re-appointed for further terms. Decisions are made with a maximum of two dissenters on any vote. Apart from presiding a certificate or testimonial in respect of a candidate, provision of any other unsolicited information to any member is likely to be considered an attempt to influence that member's deliberation and result in criminal prosecution and imprisonment for two years.

Judges of the Supreme Court

Hong Kong judges wear British-style mullos, including wigs made of horsehair, with white gloves, girdles and scarlet collared robes added for official ceremonies.[2]

In the lower courts, magistrates are addressed as "your Worship", "Sir" or "Madam", and district court judges as "your Honour". In the superior courts of record, namely the Court of Final Appeal and the High Court (which consists of the Court of Appeal and the Court of First Instance), judges are addressed as "my Lord" or "my Lady" and referred to as "your Lordship" or "your Ladyship". Following the English tradition, Masters of the High Court are addressed as "Master". When trials are conducted in Chinese, judges were addressed, in Cantonese, as Taai Gwong Mo Tai (太光馬大), Tuegh, and Lord Tai (大人) respectively, the translation adopted from the United Kingdom in China, and as Taai Gwong Gok Ha (太光閣下), "Judge, your Honour" since 1997.

For the Court of Final Appeal, the post-nominal letters "NPJ" are used for the chief justice, PJ for permanent judges and NJP for non-permanent judges. In the High Court, CJHC for the chief judge, JA for justices of appeal and J for judges of the Court of First Instance. There is no similar form for the many deputy judges or the registrar of the High Court or for judicial officers of lower courts.

Name	Appointment
John Walter Hulme	1844 – 1860[3]
Sir William Henry Adams	1860 – 1866
Sir John Jackson Smale	1866 – 1882
Sir George Phillipps	1882 – 1888
Sir James Russell	1888 – 1892
Sir Fielding Clarke	1892 – 1896
Sir John Worrell Carrington	1896 – 1902
Sir William Meigh Goodman	1902 – 1905
Sir Francis Taylor Piggott	1905 – 1912
Sir William Rees Davies	1912 – 1924
Sir Henry Cowper Gollan	1924 – 1930
Sir Joseph Hutchord Kemp	1930 – 1934
Sir Athol MacGregor	1934 – 1945
Sir Henry William Butler Blackall	1946 – 1948
Sir Leslie Bertram Gibson	1948 – 1951
Sir Gerard Lewis Huner	1951 – 1955
Sir Michael Joseph Patrick Hogan	1955 – 1970
Sir Ivo Charles Clayton Rigby	1970 – 1973
Sir Geoffrey Gould Briggs	1973 – 1978
Sir Denys Trafter Eric Roberts	1978 – 1988
Sir Yi Jiang Yang	1988 – 1996
Sir Noel Plunkett Power	1996 – 1 Januiry
Andrew Li Kwok-nang	1 July 1997 – 31 August 2000
Geoffrey Ma Tao-li	1 September 2000

See also

References

External links

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