

Session 4: National Security Law

“The Role of the Judiciary in the Conduct of Cases under the National Security Law”

- I Grenville Cross sc

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HKCEC



HK Legal System: Judicial Functions

- Rule of Law: Hong Kong's greatest asset
- Judicial independence: Constitutionally guaranteed
- WJP Rule of Law Index 2022: HK ranked 22nd out of 140 places surveyed
- HKCFA: Local judges and global jurists ensuring just outcomes
- HKCFA: Overseas judges from Australia, Canada, UK
- HKCFA: Overseas judges proclaim Court's impact, independence and stature

NSL Trials: Common Law Procedures

- Trials: Conducted in the traditional way
- Presumption of innocence: Enshrined in NSL
- Criteria for prosecution: Reasonable prospect of conviction and in the public interest
- Conviction: Proof of guilt beyond a reasonable doubt
- Rights of appeal: Constitutionally guaranteed (ICCPR)

NSL Trials: Designated Judges

- Designated judges drawn from existing judiciary
- JORC upholds judicial standards
- Horses for courses
- Criteria for designation
- Judicial oath: Administering justice without fear or favor
- Judicial independence paramount consideration
- NSL cases require judges of highest quality with impeccable credentials

NSL: Three Judge Panels

- No right to jury trial
- Circumstances necessitating trial by 3-judge panel
- 3-judge panels ensuring just outcomes
- SJ's decision to dispense with jury trial judicially reviewable
- Non-jury trials common elsewhere (UK, Ireland, Australia, NZ, Singapore, Malaysia, etc.)
- ECHR: Fairness of trial is what matters not mode of trial
- Jury trial restrictions both limited and reasonable

Conclusion

- HK Legal system successfully adapting to NSL
- Criminal justice principles unaffected
- Basic values not compromised
- Realistic mechanisms ensure just outcomes
- Judiciary as experienced, independent and professional as ever
- Rule of law in safe hands