



THE
LAW SOCIETY
OF HONG KONG
香港律師會

34th POLA SUMMIT

6 - 8 JUNE 2024 | HONG KONG

SUSTAINABILITY OF THE LEGAL PROFESSION GLOBALLY



“The Hong Kong Story: Evolution, Security and the Rule of Law”

- I Grenville Cross SC

HONG KONG SAR: Overview

- July 1, 2024: 27th Anniversary of HKSAR
- Basic Law: One Country, Two Systems (OCTS)
- Legal system: Common Law based
- Independent Judiciary: Constitutionally protected
- ICCPR: Fair trial guarantees enshrined
- Human rights: Just trial outcomes

- Power of final adjudication
- Composition: 4 PJ's; 12 NPJ's
- Overseas judges: Australia, Canada, UK
- Presidents & Chief Justices: HK in Safe hands
- WJP Rule of Law Index 2023: HK 23rd out of 142

- Sino-British Joint Declaration (JD), 1984
- Basic Law: Incorporated JD
- 50 years unchanged: 1997-2047
- President Xi Jinping, 2022: OCTS will endure
- Future now assured after 2047

Then & Now

Pre-1997

- Governor: British national appointed by monarch
- LegCo: Appointed by Governor
- Universal suffrage: Non-issue
- Top Court: Privy Council

Post-1992

- Chief Executive: Hong Kong resident chosen by HK people and appointed by Beijing
- LegCo: Elected by local residents
- Universal suffrage: Ultimate aim (CE & LegCo)
- Top Court: HKCFA

Continuity Post 1997

- Basic Law: National law of China: Continuity
- Capitalist system: Unchanged for 50 years
- Way of life: Unchanged for 50 years
- Independent legal system: Unchanged for 50 years
- Common law: Unchanged for 50 years
- Judicial & Prosecutorial Independence:
Constitutionally guaranteed for first time

National Security (1)

- S-B Joint Declaration: Silent on NS
- NS: China's preserve, as in UK
- NS: NPC trusted HKSAR (BL Art.23)
- NS: Government proposals withdrawn in 2003
- NS: Legal vacuum exploited, widespread violence
- OCTS: Survival threatened
- Beijing: Measured response

National Security (2)

- NSL: HK's Salvation
- NSL: Human right heavy
- NSL: Minimalist approach
- NSL: Restraint in application
- SNSO: Foreign cases studied
- SNSO: Outside criticism

NS: Designated Judges

- CE: Appoints all judges
- Specialist judges: Horses for courses
- CJ: Consulted on appointments
- Judge selection: Cases assigned by Judiciary, not CE
- Judicial oath: Justice administered “without fear or favour”
- CJ: Judicial independence exists as “a fact” (2022)

NS: 3-Judge Panels

- HK trials: Most cases tried without juries
- Jury trial: Possible risks
- SJ's certificate: Protecting trial's integrity
- Judicial review: Bad faith
- UK: CJA (2003): Single judge trials introduced
- Privy Council: Interests of justice paramount
- ECHR: No right to jury trial, fairness that counts
- Trial: Guilt beyond reasonable doubt

- Overseas lawyers: Restrictions inevitable
- Foreign jurisdictions: Local lawyers only
- NS Cases: Great sensitivity, national survival
- Admitting outsiders: Inherent dangers
- Foreign lawyers resident in HK: No restrictions

NS: Extraterritoriality

- Extraterritoriality: International protective principle
- Overseas threats: National protections vital
- UK NSA 2023: Model for others
- US: Extraterritorial reach for crimes against the state
- Julian Assange: Australian pursued under US Espionage Act 1917 for alleged crimes outside US

Conclusion: HKSAR

- Inherent strengths
- Business friendly environment
- Convenient geographical location
- Base for trade with Chinese mainland
- Anti-corruption regime legendary
- Safe place in which to live and work
- On the right side of history



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