



THE

LAW SOCIETY

OF HONG KONG

香港律師會

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

From the President

會長信箋

Our Ref. : PRES/FA/6496345

4 April 2022

(by email to president@commonwealthlawyers.com /
brian.speers@ccdsolicitors.co.uk)

Mr. Brian Speers
President
The Commonwealth Lawyers Association
United Kingdom

Dear President Speers

Re : CLA Statement dated 1 April 2022

I refer to the Statement on the Judiciary in Hong Kong issued by the Commonwealth Lawyers Association on 1 April 2022 (“CLA Statement”).

We are the professional body of solicitors in Hong Kong and our members are officers of the court in Hong Kong. As legal practitioners, we have constant interaction with our judicial system and have first-hand experience of how our courts operate.

We are duty bound to write to you to clarify some apparent misconceptions about our judicial system in the CLA Statement.

1. Under the Basic Law of the Hong Kong Special Administrative Region (“Basic Law”), the power of final adjudication is vested in the Court of Final Appeal (“HKCFA”), which may as required invite judges from other common law jurisdictions to sit on the HKCFA.
2. Lord Reed and Lord Hodge, two serving members of the UK's highest court have served as non-permanent judges (“NPs”) of the HKCFA since its establishment.

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3. Once appointed, a NPJ, same as other Hong Kong judges, is required to take the judicial oath to uphold the Basic Law, serve Hong Kong conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit.
4. Their function as a NPJ is to hear and determine appeals before them, in the same fair, open, transparent and independent manner as they do in their own jurisdictions.
5. In Lord Reed's public statement dated 30 March 2022, he acknowledged that "The courts in Hong Kong continue to be internationally respected for their commitment to the rule of law."
6. The resignation of Lord Reed and Lord Hodge as NPJs on HKCFA is therefore, logically, not because of any issue about adherence to the rule of law or judicial independence with the Hong Kong courts.
7. The concern expressed in the CLA Statement about judicial independence in Hong Kong is therefore clearly misplaced.
8. In Hong Kong, judicial independence is constitutionally guaranteed by the Basic Law. Articles 2, 19 and 85 of the Basic Law expressly provide that an independent judicial power, including that of final adjudication, is exercised by the Judiciary, free from any interference. Judges enjoy security of tenure and immunity from legal action in the performance of their judicial functions, and can only be removed for inability to discharge duties or for misbehaviour as set out in Article 89. These safeguards ensure that our judges, who took the judicial oath upon their appointments, administer justice without fear or favour and without bias, based only on the law and evidence before them.
9. There is no issue with judicial independence in Hong Kong. Rather, the concern stems from external interference with the judges' decision in continuation of their judicial role and the muddling of "national interests" of overseas judges in the performance of their judicial functions which should remain independent of any such outside interests.

We regret the resignation of Lord Reed and Lord Hodge as NPJs on the HKCFA as their contributions to the work of our judiciary has been immense for which we are deeply grateful.

Meanwhile, we welcome the indications from the five British NPJs, the three Australian NPJs and the Canadian NPJ that they will remain and serve on HKCFA. Their actions speak louder than words about the respect they have for the commitment of Hong Kong's judiciary to the rule of law and judicial independence.

It is worth noting that in the statement of the five British NPJs who announced that they will continue to sit on the HKCFA, they said "We are entirely satisfied of the independence and integrity which our colleagues on the CFA bring to that task.....we believe that our continued participation in the work of the CFA is in the interest of the people of Hong Kong".

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I attach for your information a joint public statement issued by the Law Society of Hong Kong and the Hong Kong Bar Association on 2 April 2022. Should you require further information, please do not hesitate to let us know.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke.

C M Chan
President



THE
LAW SOCIETY
OF HONG KONG
香港律師會



HONG KONG BAR ASSOCIATION
香港大律師公會

Press Release
(For immediate release)

2 April 2022

**Joint Statement of The Legal Profession regarding
Overseas Non-Permanent Judges of the Court of Final Appeal**

1. Since 1st July 1997, the participation of overseas non-permanent judges (“NPJs”), who are all eminent Judges from other common law jurisdictions with the highest standing, in the work of the Court of Final Appeal has made significant contribution to the administration of justice in Hong Kong.
2. The Law Society of Hong Kong and the Hong Kong Bar Association (together “the Legal Profession”) are immensely grateful to all current and former NPJs for their faithful and fearless discharge of their important role in the administration of justice in accordance with the law.
3. The Legal Profession welcomes the indications by the five British NPJs, the three Australian NPJs and the Canadian NPJ that they will remain and serve on our highest court as the Legal Profession strongly supports the continuation of the role of the overseas NPJs in the administration of justice in Hong Kong as provided for in the Basic Law.
4. It is encouraging to note the British NPJs affirmatively stating that they were “entirely satisfied of the independence and integrity which [their] colleagues on the CFA bring to [maintaining the rule of law and reviewing the acts of the executive]”. The Legal Profession considers that while legal issues may arise in context having a political dimension, politics has no role to play in the law or the administration of justice.