

LCQ13: Appointment of overseas judges and their attendance at hearings

Following is a question by the Hon Kenneth Leung and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (November 4):

Question:

Under the Basic Law, the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), the Chief Executive may, on the recommendations of the Judicial Officers Recommendation Commission and upon the endorsements of the Legislative Council, appoint judges from the common law jurisdictions outside Hong Kong as non-permanent judges from other common law jurisdictions of the Court of Final Appeal (overseas judges). Regarding the appointment of overseas judges and their attendance at hearings, will the Government inform this Council if it knows:

(1) in respect of each of the overseas judges appointed since July 1, 1997, (i) the judge's name, (ii) the judge's age at the time of first appointment, (iii) the common law jurisdiction to which the judge belongs/belonged, (iv) the date on which the judge was first appointed, and (v) the expiry date of the judge's most recent appointment (set out in a table);

(2) whether, in the past five years, there were candidates for overseas judges who declined the appointment; if so, the number of such candidates and the reasons for their declination; and

(3) as the Government has indicated that since July 1, 1997, apart from very few exceptions, a judge has invariably been drawn from the list of overseas judges to hear a substantive appeal on the Court of Final Appeal, the number of such exceptions and the details of the cases concerned, as well as the causes for such exceptions?

Reply:

President,

Based on the information provided by the Judiciary, the Government's reply is as follows:

(1) The particulars of all non-permanent judges from other common law jurisdictions of the Court of Final Appeal (CLNPJs) appointed since the establishment of the Court of Final Appeal on July 1, 1997 are as follows:

Former CLNPs	Age on Appointment	Common Law Jurisdiction	Date of First Appointment	Expiry Date of Appointment
The Honourable Sir Anthony Mason	72	Australia	July 28, 1997	July 27, 2015
The Right Honourable the Lord Cooke of Thorndon	71	New Zealand	July 28, 1997	July 27, 2006
The Right Honourable Sir Edward Somers	68	New Zealand	July 28, 1997	July 27, 2003*
The Honourable Sir Daryl Dawson	63	Australia	September 1, 1997	August 31, 2003
The Right Honourable the Lord Nicholls of Birkenhead	64	United Kingdom	January 12, 1998	January 11, 2004
The Honourable Sir Gerard Brennan	72	Australia	July 28, 2000	July 27, 2012
The Right Honourable Sir Thomas Eichelbaum	69	New Zealand	July 28, 2000	July 27, 2009
The Right Honourable the Lord Woolf of Barnes	70	United Kingdom	July 28, 2003	July 27, 2012
The Right Honourable the Lord Scott of Foscote	68	United Kingdom	July 28, 2003	July 27, 2012
The Right Honourable Sir Ivor Richardson	73	New Zealand	July 28, 2003	July 27, 2009
Mr Michael McHugh	70	Australia	July 1, 2006	June 30, 2012
The Right Honourable Sir Thomas Munro Gault	67	New Zealand	July 1, 2006	June 30, 2015#

The Right Honourable the Lord Clarke of Stone-cum-Ebony	68	United Kingdom	June 30, 2011	June 29, 2020
Mr James Spigelman	67	Australia	July 29, 2013	September 1, 2020

*Sir Edward passed away in June 2002.

#Sir Thomas passed away in May 2015.

Serving CLNPs	Age on Appointment	Common Law Jurisdiction	Date of First Appointment	Expiry Date of Present Appointment
The Right Honourable the Lord Hoffmann	63	United Kingdom	January 12, 1998	January 11, 2022
The Right Honourable the Lord Millett	68	United Kingdom	July 28, 2000	July 27, 2021
The Honourable Mr Justice Murray Gleeson	70	Australia	March 1, 2009	February 28, 2021
The Right Honourable the Lord Neuberger of Abbotsbury	61	United Kingdom	March 1, 2009	February 28, 2021
The Right Honourable the Lord Walker of Gestingthorpe	70	United Kingdom	March 1, 2009	February 28, 2021
The Right Honourable the Lord Collins of Mapesbury	70	United Kingdom	June 30, 2011	June 29, 2023
The Right Honourable the Lord Phillips of Worth Matravers	74	United Kingdom	October 1, 2012	September 30, 2021

The Honourable Mr Justice William Gummow	70	Australia	July 29, 2013	July 28, 2022
The Honourable Mr Justice Robert French	70	Australia	May 31, 2017	May 30, 2023
The Right Honourable Lord Reed of Allermuir	60	United Kingdom	May 31, 2017	May 30, 2023
The Right Honourable the Baroness Hale of Richmond	73	United Kingdom	July 30, 2018	July 29, 2021
The Right Honourable Madam Justice Beverley McLachlin	74	Canada	July 30, 2018	July 29, 2021
The Right Honourable Lord Sumption	71	United Kingdom	December 18, 2019	December 17, 2022

(2) In the past five years, no overseas judge refused to accept appointment as CLNPJ.

(3) According to section 16 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (the Ordinance), all appeals shall be heard and determined by the Court, which is constituted by five judges as follows:

(a) the Chief Justice or a Permanent Judge (PJ) designated to sit in his place under the Ordinance;

(b) three PJs nominated by the Chief Justice; and

(c) one non-permanent Hong Kong judge or one CLNPJ (selected by the Chief Justice and invited by the Court).

As at September 30, 2020, the Court of Final Appeal has heard around 700 substantive appeals since July 1, 1997. With the exception of around ten cases, a judge has invariably been drawn from the list of CLNPJs to sit on the Court. These exceptional occasions were mainly due to the unavailability of the CLNPJs at the scheduled hearing dates or because there were unforeseen circumstances which rendered it not possible for the CLNPJs to hear the appeals as planned.