



Judiciary

The Judiciary of the Hong Kong Special Administrative Region is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes, including disputes between individuals and the Government.

It is fundamental to Hong Kong's legal system that members of the Judiciary are independent of the executive and legislative branches of government.

The courts of justice 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 (which includes the Family Court), the Lands Tribunal, the Magistrates' Courts (which include the Juvenile Court), the Coroner's Court, the Labour Tribunal, the Small Claims Tribunal, and the Obscene Articles Tribunal.

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 court system in which either or both Chinese and English can be used was put in place, in accordance with the requirement of the Basic Law.

The Court of Final Appeal: It was established on July 1, 1997 upon the commencement of the Hong Kong Court of Final Appeal Ordinance. It replaced the Judicial Committee of the Privy Council in London as the highest appellate court in Hong Kong, to safeguard the rule of law after June 30, 1997. The Court, when sitting, will comprise five judges — usually the Chief Justice, three permanent judges and one non-permanent judge from Hong Kong or another common law jurisdiction. There is a panel of four non-permanent Hong Kong judges and ten non-permanent judges from other common law jurisdictions.

The Court of Appeal of the High Court: 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 questions of law referred to it by the lower courts. There are 13 Justices of Appeal, including the Chief Judge.

The Court of First Instance of the High Court: It has unlimited jurisdiction in both civil and criminal matters. It also exercises jurisdiction in admiralty, bankruptcy, company winding-up, family, adoption, probate and

mental health matters. In its appellate jurisdiction, it hears appeals from the Magistrates' Courts and the Labour Tribunal, the Small Claim Tribunal and the Obscene Articles Tribunal, as well as appeals from the Minor Employment Claims Adjudication Board.

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 25 Judges of the Court of First Instance at present.

The District Court: The District Court, established in 1953, has limited jurisdiction in both civil and criminal matters. With effect from December 1, 2003, it has civil jurisdiction to hear monetary claims up to \$1 million or, where the claims are for recovery of land, the annual rent or rateable value does not exceed \$240,000. It has jurisdiction over employees' compensation, equal opportunity claims and matrimonial matters including divorce, custody, maintenance and adoption. It also has jurisdiction to hear stamp duty assessment appeals. In its criminal jurisdiction, the court may try the more serious offences, except murder, manslaughter and rape. The maximum term of imprisonment it may impose is seven years.

There are one Chief District Judge, one Principal Family Court Judge and 35 District Judges. Among them, the Principal Family Court Judge and two District Judges sit in the Family Court and one District Judge sits in the Lands Tribunal as Presiding Officer. The District Court Registry comprises of a Registrar and five Deputy Registrars. They deal with interlocutory and taxation matters.

The Magistrates' Courts: Magistrates exercise criminal jurisdiction over a wide range of offences. Although there is a general limit of two years imprisonment or a fine of \$100,000, 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 Magistrates' 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 is a total of 71 full-time Magistrates. They sit in various Tribunals and seven Magistrates' Courts: Eastern, Kowloon City, Kwun Tong, Tsuen Wan, Sha Tin, Fanling and Tuen Mun. A Principal Magistrate is in charge of each Magistrates' Courts. The Chief Magistrate is the overall in charge whose chamber is at the Kowloon City Law Courts Building.

Appeals against Magistrates' decisions are heard by a Judge of the Court of First Instance.

There are also 11 full-time Special Magistrates. They deal with cases such as hawking contraventions, traffic offences and other departmental summonses.

The Coroner's Court: Coroners are empowered to investigate sudden, unnatural or suspicious deaths occurring in Hong Kong (and deaths occurring outside Hong Kong if the body is brought into Hong Kong).

Except when death occurs while the individual is in custody, or the Secretary for Justice requests, 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 main 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 fatalities similar to that under investigation.

The Juvenile Court: The Juvenile Court has 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.

The Juvenile Court also has power to deal with care and protection cases involving young people aged up to 18.

A juvenile magistrate will explain the alleged offence to the child or young person in simple language and assist him/her if need arises. Before passing sentence, the magistrate may consider pre-sentencing reports. Press coverage of the proceedings in a juvenile court is restricted to avoid disclosure of the identity of a defendant.

The Juvenile Courts are situated at the Eastern, Kowloon City, Tsuen Wan, Fanling and Tuen Mun Magistrates' Courts.

The Lands Tribunal: One of the important functions of the Lands Tribunal is to determine applications by landlords for possession of premises under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or under the Common Law. In such applications, apart from making orders for possession, the Tribunal also has power to make orders for the payment of rent, mesne profits and any other money which is due under the tenancy, as well as for the disposal of any property left in the premises by the tenant.

Another frequently used jurisdiction of the Tribunal is to determine building management disputes, such as 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, convening owners' meeting and appointment of administrator.

The Tribunal also has jurisdiction to determine the amount of compensation payable by the Government to a person whose land has been compulsorily resumed or has suffered a reduction in value because of public developments. Majority owner of a property may also apply to the Tribunal for an order for the sale of the land for redevelopment purpose under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).

The Tribunal also exercises appellate jurisdiction over (i) determinations by the Commissioner of Rating and Valuation under the Rating Ordinance (Cap. 116); (ii) determinations by the Director of Lands under the Government Rent (Assessment and Collection) Ordinance (Cap. 515); and (iii) 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 they may appear in person.

The Tribunal consists of a President who is a Judge of the Court of First Instance, one Presiding Officer who is a District Judge, and two members who are surveyors.

The Labour Tribunal: The Labour Tribunal was set up in 1973 to provide a quick, inexpensive and informal procedure for adjudicating disputes between employees and employers. It deals with claims arising out of a breach of a term of the contract of employment or breach of the Employment Ordinance. 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 mostly 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.

There are seven full-time Presiding Officers, including one Principal Presiding Officer. The tribunal is located at 36, Gascoigne Road, Yaumatei, Kowloon.

The Small Claims Tribunal: The Small Claims Tribunal was established in 1976. It deals with monetary claims arising from contract or tort, involving amounts not exceeding \$50,000.

Hearings are informal and usually conducted in Cantonese. Legal representation is not allowed. Parties may authorise, with the leave of the court, persons very closely connected to the parties and fully familiar with the case to be their 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 six full-time Adjudicators, including a Principal Adjudicator. The Small Claims Tribunal is situated at the Wan Chai 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 covers two main 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 full-time 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 the Eastern Law Courts Building.

Appointment of Judges and Judicial Officers: Judges and judicial officers are appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission. The Commission is an independent statutory body composed of judges, persons from the legal profession and eminent persons from other sectors.

Judges and judicial officers are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.