

IPBA Journal

September 2014

No **75**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION



Interview with Geoffrey Ma, Chief Justice of the Hong Kong Court of Final Appeal

On 15 January 2014, Caroline Berube was granted an opportunity to interview the Honourable Chief Justice Geoffrey Ma, for the September 2014 issue of the *IPBA Journal*. The following is an excerpt of that interview. We give special thanks to Allan Leung of Hogan Lovells for arranging this special opportunity.



Mr Geoffrey Ma

Chief Justice Ma graduated with an LL.B. from the University of Birmingham in 1977, and practised as a Barrister in England and Wales. He was then called to the Bar of Hong Kong, Australia and Singapore, successively. In 1993, CJ Ma was appointed Queen's Counsel. He was appointed Recorder of the Court of First Instance of the Hong Kong High Court in 2000, and became a judge a year later and was elevated to the position of Justice of Appeal in 2002. He became Chief Judge of the High Court in 2003. In 2010, he was appointed as Chief Justice of the Hong Kong Court of Final Appeal.

1. What is the public's main concern regarding the law in Hong Kong?

People in Hong Kong are becoming increasingly interested in the concept of the rule of law and how it operates here. Although Hong Kong is now part of the People's Republic of China, it still maintains its common law heritage under the constitutional

model prescribed by the Basic Law (Hong Kong's constitution) of one country, two systems. The Basic Law emphasises the principle of judicial independence.

Although this is the legal system, people are concerned as to how it works in practice and the extent of the interface between the Hong Kong

and Mainland judicial systems. The concern relates to whether there is in practice any influence from the Mainland courts on the Hong Kong Judiciary, on matters such as the appointment of judges. There is, of course, no such influence and demonstrably so.

One of the main themes of the Basic Law is the emphasis on human rights. In Hong Kong, we have also had a Bill of Rights, setting out constitutional rights. Since 1997, there have been many constitutional cases (almost always involving the Government) which have tested the limits of these rights. We have seen more public law cases in the last 17 years than there had been in the 50 years prior to 1997.

Our courts at all levels (from the Magistrates' courts through to the Court of Final Appeal) have dealt with many constitutional issues such as the freedom of expression, the freedom of demonstration – soon after 1997, there was a case in relation to burning the flag – to rights pertaining to sexual equality and homosexuality. Last year, we dealt with the position of transsexuals and their right to marry, in the case of *W v The Registrar of Marriages*.

It is difficult to pinpoint the reason for the increase in public law cases (usually in the form of applications for judicial review) but certainly a greater awareness of rights and a knowledge that the Government can be held accountable in the courts where it has acted outside the law are contributing factors. And it is, of course, essential in all of this that there exists a truly independent Judiciary where everyone – especially the Government and the authorities – are treated equally before the law.

2. Is there a greater interaction between Chinese civil law and Hong Kong common law since the retrocession?

The two systems are entirely different. The Mainland system can loosely be called a civil law system, and Hong Kong is a common law system. This is an inevitable consequence of the constitutional model of one country, two systems. By the way, the fact that Hong Kong follows the common law is stipulated expressly in the Basic Law.



3. Do you think that, at some point, the Mainland Chinese government is going to start to impose its views on the appointment of judges being made and censure certain topics?

There is no factual basis to support such a view, nor is there a legal basis for such a view either. The Basic Law runs completely counter to this. For example, the Basic Law states in no less than three provisions that there will be an independent judiciary in Hong Kong.

In reality, the Hong Kong Judiciary has shown its independence by being transparent in the way it has dealt with cases – always strictly according to the law and legal principles – and there are no signs of that changing. I can certainly say that as Chief Justice, I have never heard remotely of any instance of direct or indirect attempts from the Mainland to influence the independence of Hong Kong's judicial system.

4. What is the appeal process in Hong Kong and the role of the Court of Final Appeal?

Before 1997, there was a two-tiered appellate system, first to the Court of Appeal (in some cases the High Court, now called the Court of First Instance) and then to the Judicial Committee of the Privy Council in London. Since 1997, of course, the Privy Council has been replaced by the Court of Final Appeal. But there is still this dual appellate system. This is the common system in most common law jurisdictions.



5. Does the Court of Final Appeal have power to declare laws unconstitutional or must it defer to the Executive or the Legislature?

Under the Basic Law, there is power vested in the courts to declare laws passed by the legislature as unconstitutional and therefore such laws are of no effect. This is to be contrasted with the position, say, in Australia, New Zealand, or the United Kingdom, where the courts have no power to declare

unconstitutional laws as void. The Hong Kong courts have exercised this power on a number of occasions.

6. How are foreign lawyers admitted to practise in Hong Kong? Are their roles limited to solicitor work or can they also be granted the right to appear in court?

As a foreign lawyer it is possible to register as a legal practitioner in Hong Kong but you can only practise foreign law. However, by passing the Overseas Lawyers Qualification Examination ('OLQE'), you may become a Hong Kong lawyer and you can also opt to become a barrister or a solicitor, because Hong Kong still has a dual profession.

7. How are foreign judgments and awards enforced in Hong Kong, and what is the process for foreign companies seeking to enforce a foreign judgment on Hong Kong assets?

Hong Kong does not differ from other common law jurisdictions. Concerning court judgments, many reciprocal arrangements under international conventions exist. In the absence of a convention, you can enforce it under common law.

In terms of arbitration awards, this is again a matter of conventions such as the New York Convention. Once awards are registered in Hong Kong, they are then treated as though they were judgments of a Hong Kong court.

8. What are the main legal challenges that Hong Kong is facing to keep its place as one of the soundest legal systems in the world?

It has to continue to enjoy the confidence of the public and of those who work or do business here. They have to trust that the system is a good one, one that implements the rule of law. The rule of law, put in simple terms, comprises first, the existence of good and fair laws, and second, the machinery to enforce those laws by an independent and effective judiciary. Hence, the challenge is to maintain this confidence, continue to have a truly independent judiciary and ensure that judges are of the highest quality within this system.

9. Do you see any differences in how the courts operate in Hong Kong and the United Kingdom?

There are some minor procedural differences between the United Kingdom and Hong Kong, but the practise of law is very similar. I suppose an indication of this is the number of lawyers and barristers from London who practise in Hong Kong.

10. Which legal specialties do you see growing in Hong Kong for the next decade?

Since Hong Kong is a commercial city, there remains a vast potential and demand for practices related to commerce and business law. However, since 1997 there have also been many public law cases (administrative and constitutional law, cases involving the Government, and human rights).



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Caroline Berube is a managing partner of HJM Asia Law & Co LLC and focuses on Chinese corporate law and commercial practice. She has advised clients in various industries such as manufacturing, energy (oil, gas and mining), technology, and services. Caroline is also a regular speaker at many international conferences and is an arbitrator approved by the Chinese European Arbitration Centre and The China International Economic and Trade Arbitration Commission.