

Chief Justice of Court of Final Appeal issues Statement

In view of the number of commentaries, opinions and criticisms that have recently been made in relation to various decisions of the courts and judges, the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, today (September 23) issued a Statement to explain some fundamental principles regarding the administration of justice in Hong Kong, with particular emphasis on criminal cases. It is crucial for these principles to be firmly borne in mind when commenting on the work of the courts and judges. These principles all originate from the Basic Law which guarantees the exercise of independent judicial power. The Basic Law states in express terms that judicial power is to be exercised independently, free from any interference.

The Statement emphasises the constitutional duty of judges, in the exercise of judicial power, strictly to apply the law and nothing else. Such duty does not involve judges deciding political matters or controversies. It follows that judges must therefore not be influenced by political considerations of whatever nature. In other words, there must be no bias, whether actual or perceived, on the part of the courts in the determination or handling of cases. It is the law that always governs the determination and handling of any case, without any extraneous factors being considered. Furthermore, all are equal before the law, no one is above it. Judges are constitutionally required to administer justice without fear or favour.

There are some basic principles in the handling of a criminal case that must also be borne in mind. Foremost is the requirement of a fair trial. There are other principles: the presumption of innocence, the requirement that the burden is on the prosecution to prove that an accused committed a crime beyond reasonable doubt before there can be a conviction and the right to an appeal.

Special attention is devoted in the Statement to the topics of bail, sentencing, and appeals and reviews. These are facets of a criminal case that have attracted some comment, opinion and criticism, but it is important that these should be informed and

understood in the light of the proper context. In this respect, the role and responsibilities of the Secretary for Justice (as representing the public interest in the prosecution of crimes) must also be properly understood.

Judges must be impartial and when they are not, a number of courses are available. There can be redress by way of an appeal or review, or an application for recusal can be made, whether by the accused or the prosecution (meaning the Secretary for Justice). Complaints can also be made to the Judiciary under an established complaints mechanism.

Courts and judges are not above criticism but such criticism must be informed, solidly based and properly made. Otherwise it would be detrimental to public confidence in the administration of justice and ultimately to the rule of law in Hong Kong. There must not be a politicisation of the Judiciary and its functions.

The community is urged to read the Statement in full in the Annex or at the website of the Court of Final Appeal ([www.hkcfa.hk/filemanager/common/pdf/Statement%20by%20CJ%20of%20CFA%20\(23%20Sep%202020\)%20Eng.pdf](http://www.hkcfa.hk/filemanager/common/pdf/Statement%20by%20CJ%20of%20CFA%20(23%20Sep%202020)%20Eng.pdf)).

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