

22 September, 2020

Editor
Sydney Morning Herald
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Dear Editor,

I refer to Eryk Bagshaw's online article "Australian judge James Spigelman resigns from Hong Kong court" on 18 September which carried remarks of British MP Sir Iain Duncan Smith.

Common law and judicial independence are bedrocks of Hong Kong's success. Article 2 of the Basic Law clearly states that the Hong Kong Special Administrative Region (HKSAR) enjoys independent judicial power, including that of final adjudication while Article 8 stipulates that the common law system shall be maintained. Nobody should doubt the HKSAR Government's commitment to the rule of law and judicial independence.

Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal (CFA). Since 1997, eminent jurists from other common law jurisdictions have been appointed to the CFA as overseas non-permanent judges. Currently, there are 13 overseas non-permanent judges.

The fact that these eminent judges sit on the CFA testifies to Hong Kong's judicial independence, helps maintain a high degree of confidence in our legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions. We appreciated the valuable contribution of these eminent jurists on the CFA to jurisprudence in Hong Kong. The appointment of judges from other common law jurisdictions has served us well and will continue.

Under the Court of Final Appeal Ordinance (Cap.484), a non-permanent judge of the CFA may at any time resign his office by notice in writing addressed to the Chief Executive. No consultation or approval process is necessary. Mr Justice Spigelman did not give any reason for his resignation from the CFA.

I would like to stress that there could be no question of the National Security Law affecting Hong Kong's judicial independence and the smooth operation of the judicial system, including the CFA.

Yours sincerely,
Raymond Fan
Director
(Representative to Australia and New Zealand)