

July 18, 2023

The Editor
The Globe and Mail
By Email: letters@globeandmail.com

Dear Editor,

I write in response to your editorial “It’s time for Beverley McLachlin to bench herself” (July 17), which contains misleading comments on Hong Kong’s legal system and the Hong Kong National Security Law (NSL), reflecting your misunderstanding about the city’s highly regarded judicial system.

Hong Kong’s judicial independence is premised on the solid infrastructure that has been laid down in the Basic Law of the Hong Kong Special Administrative Region (HKSAR), including the security of tenure, the immunity of judges, and importantly the express provision in Article 85 of the Basic Law that guarantees judicial independence, free from any interference. All judges are required to administer justice without fear or favour. The only criterion upon which judges are appointed is their judicial and professional quality, and their appointment by the Chief Executive under Article 88 of the Basic Law is upon the recommendation of an independent statutory commission comprising representatives of the Judiciary, the legal profession and distinguished figures of the community.

Under the NSL, the Chief Executive establishes a list or panel of judges for dealing with national security cases. The listing and handling of cases, as well as the assignment of which judge or judges are to handle cases, have always been judicial functions to be exercised by the Judiciary independently. It is a well-established practice for specialist judges to be designated for dealing with a particular area of law. When adjudicating all cases, judges remain independent and impartial in performing their judicial duties, free from any interference.

Article 35 of the Basic Law provides that Hong Kong residents have the right to choose their lawyers, but such right means a person has a right to choose counsel who are available and qualified to practise in Hong Kong. They have no right to demand overseas counsel be admitted ad hoc to represent them. Even under the existing law, they must obtain the permission of the courts, who will only grant it if stringent conditions are satisfied.

As guaranteed by the Basic Law and the Hong Kong Bill of Rights, defendants charged with criminal offences shall have the right to a fair trial by the Judiciary; and Article 85 of the Basic Law stipulates that the courts of the HKSAR shall exercise judicial power independently, free from any interference.

The constitutional guarantee on judicial independence in Hong Kong is kept solemnly, and the legal system in Hong Kong remains strong and intact.

Yours sincerely,

Emily Mo
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Government of the Hong Kong Special Administrative Region