

'Becoming a totalitarian state': UK judge on why he quit Hong Kong court

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Lord Sumption (pictured) is one of the three foreign judges who have resigned from the Court of Final Appeal

A high-profile British judge who resigned from Hong Kong's highest court last week has warned the city is "slowly becoming a totalitarian state" and judges are being compromised by an "impossible political environment created by China".

Lord Sumption's comments on Monday came as a third senior foreign judge in the past week resigned from the Court of Final Appeal.

"The problem in Hong Kong has been building up over the last four years and I think all the judges on the court feel concerned about this," Lord Sumption told the BBC's Today programme.

"I have reached the point eventually where I don't think that my continuing presence on the court is serving any useful purpose."

On Monday he wrote in a newspaper op-ed that the city's rule of law has been "profoundly compromised".

Hong Kong's government said it "strongly disapproves" of Lord Sumption's opinions, calling them a "betrayal against Hong Kong's judges".

It highlighted remarks from the other leaving judges who said they still believed in the independence of the courts.

Canadian judge Beverley McLachlin, who resigned on Monday citing her wish to spend more time with family said: "I continue to have confidence in the members of the Court, their independence, and their determination to uphold the rule of law."

But her departure as well as that of Lords Sumption and Lawrence Collins - another former UK Supreme Court justice- last week means at least six senior foreign judges have stepped down from sitting in Hong Kong since a major national security law (NSL) was imposed by China in 2020.

Lord Sumption has been much more overtly critical than his peers- arguing that the laws, which have been widely criticised as being draconian, have overridden the independent functioning of courts and heaped pressure on the judiciary.

"Intimidated or convinced by the darkening political mood, many judges have lost sight of their traditional role as defenders of the liberty of the subject, even when the law allows it," he wrote in the Financial Times.

An 'oppressive' situation in Hong Kong

Speaking to the BBC on Monday, Lord Sumption said it had become increasingly clear that Hong Kong's supercharged security laws were being used to "crush peaceful political dissent, not just riots."

Legal experts have for some time now warned about the city's degraded rule of law in the wake of laws enacted by Beijing.

China and Hong Kong have defended the NSL laws as crucial to maintaining law and order in the city after major pro-democracy protests and unrest in 2019 and 2020.

But rights groups and Western governments say the law has been used to criminalise acts of free speech and assembly, leading to a near complete silencing of dissent in the global financial hub,.

More recently, the EU and the US heavily criticised as "politically motivated" [the conviction of 14 democracy activists on 30 May](#) for "subversion" . The defendants in the landmark Hong Kong 47 case face a minimum of 10 years in prison and could even be jailed for life.

That case "was the last straw", Lord Sumption said, referencing the court's assessment that organising a political primary was tantamount to a national security crime.

"The judgement... was a major indication of the lengths to which some judges are prepared to go to ensure that Beijing's campaign against those who have supported democracy succeeds."

He also emphasised the other major problem: "If China doesn't like the court's decisions it can reverse them."

Such a precedent was set in 2023, when in the high-profile prosecution of Hong Kong billionaire Jimmy Lai, Beijing overturned the Court of Final Appeal's ruling to allow the democracy activist his choice of lawyer.

He also spoke of further pressures on judges, describing in his op-ed an "oppressive" environment. He wrote of the government's "continued calls for judicial 'patriotism'" and the outrage sparked in the rare instances when a judge acquits or grants bail to an NSL defendant.

"It requires unusual courage for local judges to swim against such a strong political tide. Unlike the overseas judges, they have nowhere else to go," he wrote.

Why are there foreign judges serving in Hong Kong?

It is a holdover from Hong Kong's past as a British colony.

After the UK handed Hong Kong back to China in 1997, the agreement between the countries stipulated that the special territory would continue to operate with its freedoms and systems for 50 years- including its common law legal system which operates in several other jurisdictions

worldwide.

Currently there seven foreign judges remaining on the court- three British and four from Australia. Typically they are very experienced senior judges who have retired from their countries' senior courts.

They operate as overseas non-permanent appointees; a typical appeal bench of five judges at the Court of Final Appeal will see a foreign judge hearing the case along with three other local judges.

Their presence was long seen as a sort of bulwark protection to help uphold the British-style common law legal system which has been key to Hong Kong's stature as a global financial hub.

As recently as March this year, Hong Kong's leader praised the foreign judges saying their appointments "help maintain a high degree of confidence in (Hong Kong's) judicial system". According to recent media reports, [they are paid £40,000 per case](#).

Lord Sumption had said most of Hong Kong's judges are "honourable people with all the liberal instincts of the common law."

"But they have to operate in an impossible political environment created by China."

Beverley McLachlin (bottom row, second from left) has also tendered her resignation. The remaining judges on the court are: (top row l-r: Lennie Hoffman, Nick Philips, Robert French, Anthony Keane; bottom row: James Allsop, David Neuberger and William Gummow)

Controversial presence

Since Hong Kong's security laws kicked in, rights groups, critics and even the UK government had questioned the foreign judges' continued presence on the court.

In 2020, a senior Australian judge was the first to step down from the court. James Spigelman directly cited the impact of the wide-sweeping National Security Law which hadn't kicked into operation yet.

Two years later, UK Supreme Court justices Robert Reed and Patrick Hodge also stepped down following concerns raised by the British government.

Lord Reed, the chief justice of the top UK court, said he agreed with the government that serving Supreme Court justices could not continue to serve in Hong Kong without appearing to endorse a government that had "departed from values of political freedom, and freedom of expression".

The remaining judges on the court at the time - which included Lords Collins and Sumption - issued a statement shortly after defending their position.

They said they believed their "continued participation" would be "in the interest of the people of Hong Kong".

But on Monday, Lord Sumption said he no longer believed this.

He told the BBC he had chosen to stay on the first few years "to see how things develop and to hope that one can make a positive contribution." He had written he hoped "the presence of overseas judges would help sustain the rule of law."

“It’s taken a long time to conclude that that is not realistic.”

His sharp criticism and the resignations of the other judges will further fuel concerns about Hong Kong’s status as an international city, particular as the latest resignations come just weeks after the city implemented a second, even more wide-scoping security law known as Article 23.

Legal scholar Eric Lai, told the BBC the two British judges had been “well known” for their support of Hong Kong’s legal system in the past and their commitment to the court in critical cases.

“Their change of mind to resign signals the worsening legal environment in HK,” he said.

But the city’s authorities defend the integrity of their legal system.

The chief justice of the Court of Final Appeal said last week the court would continue to function regardless of the resignations.

Andrew Cheung stressed the court’s independence: “All judges and judicial officers will continue to... administer justice in full accordance with the law, without fear or favour, self-interest or deceit”.

Frances Mao, *BBC News*

P.S.

• BBC. 11 June 2024:
<https://www.bbc.com/news/articles/c722094n135o>