

## CJ's speech at Ceremonial Opening of the Legal Year 2012 (with photos)

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The following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, at the Ceremonial Opening of the Legal Year 2012 today (January 9):

Secretary for Justice, Mr Chairman, Mr President, Distinguished Guests, Ladies and Gentlemen,

### Introduction

On behalf of all of us in the Judiciary, I extend a warm welcome to you to the Opening of the Legal Year. This occasion is an important one for the Judiciary, as it provides me with the opportunity to say a few words about the work we undertake and the operation of the law as it affects our community. The law, in one way or another, pervades almost every activity in Hong Kong, and in many cases, governs it. In a society as varied and populous as ours, it is inevitable that there will be many interests at stake; in many instances, such interests will from time to time conflict with each other. It is therefore essential that the law operates well in practice. Where conflicts give rise to legal disputes, it is critical that the courts can effectively resolve them.

### The relocation of the Court of Final Appeal

Before saying a little more about the administration of justice (for that is what is meant when one talks about the operation of the law in practice), I would like to say something about the old Supreme Court building on Jackson Road. This building was built on reclaimed land as part of the 1895 reclamation scheme. This building has recently been returned to the Judiciary after being occupied by the Legislative Council for close to 26 years. It is a timely return to the Judiciary. The building will become the new location of the Court of Final Appeal, which, we have been told, will hopefully be in operation in about three years' time. By then, apart from giving us a much larger and efficient courtroom for the sittings of the Court of Final Appeal, the building will also have, I hope, many restored historical features of the original building, parts of which will be open for the public to enjoy. This is, after all, a building of great historical value and interest, and it belongs very much to the community.

The return to the Judiciary of this historic building is also timely because in six days' time (January 15), this will mark exactly 100 years to the day that the building was officially opened as the new Courts of Justice in Hong Kong. On that day, January 15,

1912, there were present at the opening the Governor of Hong Kong, Sir Frederick Lugard and the Chief Justice, Sir Francis Pigott.

Also present was a Mr Abdullah Bin Suffiad, who was the clerk to the Chief Justice. His great grandson, Mr Justice Rahman Suffiad, is behind me, a Judge of the Court of First Instance of the High Court. How proud his great grandfather would be to see this continuity in the law.

The sense of the continuity of the common law in Hong Kong is reflected in what was said that day when the Courts first opened. Sir Frederick Lugard said this:

".....our Courts of Justice shall always surpass all other structures in durability, firm set on their foundations and built four-square to all the winds that blow, as an outward symbol perhaps of the Justice which shall stand firm though the skies fall..... Other Chief Justices will preside in this Court..... without fear and without favour. Time will bring great changes of which we see the beginnings today. Constitutions of empires may change, the map of the world may change, but day by day through the long vista of the years to come the statue of Justice, with shrouded vision holding impartial scales, which surmounts the portals of these Courts, shall stand impervious to all changes and all storms; and day by day the task of administering justice shall take place within these walls with even and unwearied course."

The concepts of justice represented by this imposing building and the statement of the role of the Courts just quoted remain as alive today as they have been in the past and will, I believe, always remain here in Hong Kong. Those concepts of the independence of the Judiciary, the safeguarding of the rights and freedoms of people in Hong Kong, the protection of private property and the preservation of the common law itself, are all embodied in the Basic Law of the Hong Kong Special Administrative Region, in Articles 2, 4, 6 and 8 of that constitutional document.

#### Access to Justice

Last year, I mentioned that one of the facets of the administration of justice was the just and proper resolution of disputes by the courts. Justice is of course the key here: there can be no complaint when those who deserve justice, get it.

But there cannot fully be justice unless there is proper access to it. The Basic Law is full of references to access to justice, principally Article 35. In recent years, access to justice has increasingly become a topic of discussion within the community. From the

Judiciary's point of view, while Hong Kong's legal system contains many excellent features and has a foundation of which it can be justly proud, there ought to be on-going efforts to augment every person's access to justice.

There are three vantage points from which this question can be approached: the Government's, the Court's and the legal profession's.

From the Government's point of view, legal aid is perhaps the most tangible form of enabling persons to gain access to justice. Obviously, if legal aid were to be extended this would be beneficial but one must recognise instantly that public resources are limited.

Next, the courts can do much to assist litigants. For example, often, court procedures are unnecessarily complicated and can be simplified to enable litigants to have their disputes more easily resolved. The object of court procedures is to enable disputes to be effectively and expeditiously resolved. This is a key element in access to justice.

The Civil Justice Reform, now into its third year, has steadily changed the way civil litigation is conducted in Hong Kong. I am on the whole satisfied with the progress made; certainly, I am content with the direction that it is heading. Above all, I am confident that the legal profession, both barristers and solicitors, is finally comprehending the Reform and their responsibilities to the administration of justice in this regard. This is a major step in enabling there to be true access to justice.

The other key group of persons in the administration of justice are the judges themselves. Last year, I referred to the number of judges reaching retirement age in the next year or so. Recruitment exercises are now being conducted with a view towards filling the vacancies we have and will have. I am confident that we shall maintain the high standards that the public expects in the Judiciary.

Lastly in relation to access to justice, the position of the professions. I have already mentioned them in the context of the Civil Justice Reform. Over the years, the legal profession has shown itself to be more than receptive to the idea of providing pro bono legal services to those in need of such services. The Law Society in particular has now a developed pro bono legal services scheme, in which all solicitors are encouraged to give something back to the community. I congratulate all those lawyers who have taken part in this scheme and I take this opportunity to thank them publicly. My wish, as indeed was the wish of my predecessor, Chief Justice Li, is that the idea of pro bono services will become even more visible in the years to come.

In this context, the Judiciary is now working closely with the Administration to help it

develop the services that can be provided to assist in particular litigants in person. The matter is receiving attention from the Legislative Council Panel on Administration of Justice and Legal Services. Support in principle from both solicitors and barristers is naturally there, but the details are in the process of being ironed out. I am confident that something positive will emerge.

### Improving the Administration of Justice

I have earlier alluded to those who deserve justice, getting it. Given the limited resources that the Judiciary has (in common with all organisations), it is important to continue to make improvements. I mention two specific areas here.

First, I deal with the type of claims under the various anti-discrimination ordinances such as the Sex Discrimination Ordinance Cap. 480, the Disability Discrimination Ordinance Cap. 487, the Family Status Discrimination Ordinance Cap. 527 and the Race Discrimination Ordinance Cap. 602. These are pieces of social legislation enacted for the purpose of protecting persons against discrimination in society. In September 2011, the Judiciary published a consultation paper in which interested parties were asked to comment on various proposals to improve the cost-effectiveness of the legal proceedings involved in such claims and to simplify the procedures themselves. Responses are now being collated.

Secondly, I believe that it is now time to give serious consideration to abolishing the automatic right of litigants in a civil dispute to appeal from the Court of Appeal to the Court of Final Appeal based solely on monetary value (this being \$1 million). This provision is a remnant of the colonial practice that had existed for over a century prior to 1997 when the final appellate body for Hong Kong was the Judicial Committee of the Privy Council in London. Very few, if any, other common law jurisdictions now have this automatic right of appeal. It is an anachronism. More than that, it wastes valuable resources that the Judiciary and the community can scarcely afford to be utilised in this way. The majority of appeals that have been heard by the Court of Final Appeal by this route, have been totally unmeritorious. Such appeals prevent genuine and much more meritorious appeals (often in the public law sphere) being heard in good time by the Court of Final Appeal. I shall at an appropriate time be pressing for the necessary legislative changes so that the type of cases that at present falls within s. 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance Cap. 484, shall be subject to the requirement of leave to appeal, as all other cases are.

### Conclusion

The world and the society in which we live change, often rapidly. New challenges present themselves constantly. Like the building that is to be the Court of Final Appeal,

the common law is both old and new, adapting itself to new circumstances in order to produce the right and just answer.

Finally, we are soon to be in the Lunar New Year. I wish all of you and your families good health and much happiness. Thank you.

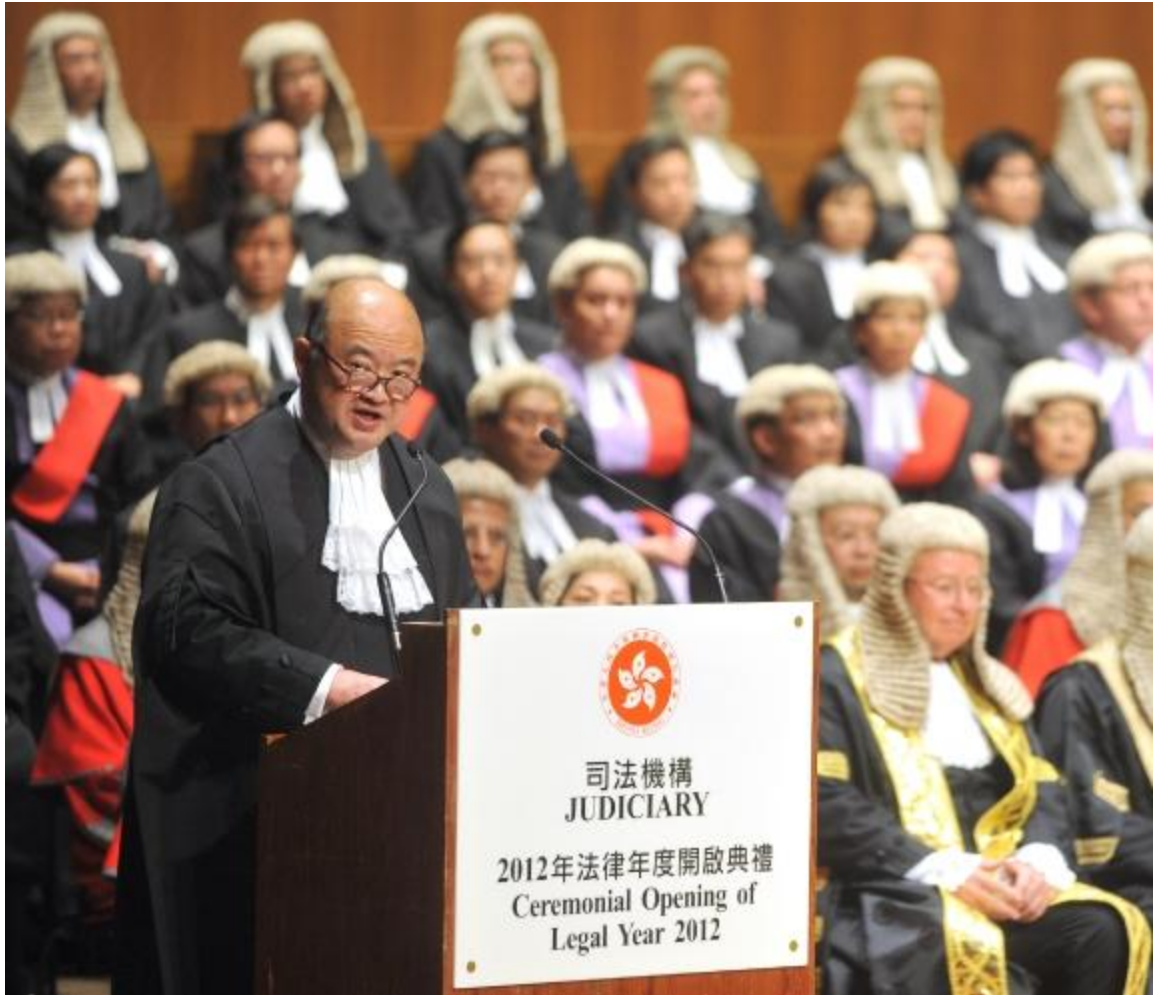
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The Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, inspects the guard of honour mounted by the Hong Kong Police Force at Edinburgh Place, during the Ceremonial Opening of the Legal Year 2012, today (January 9).



Mr Ma addresses more than 800 attendees, including judges, judicial officers and members of the legal profession, at the Concert Hall of Hong Kong City Hall, today (January 9).