

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 2013 today (January 14):

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

On behalf of the Hong Kong Judiciary, I extend a warm welcome to all of you to this year's Opening of the Legal Year. I welcome our overseas guests and in particular Justice Susan Kiefel of the High Court of Australia.

In the past few months, the law and the Judiciary have very much been the focus of discussion by many people from all walks of life. This is hardly surprising: even if one does not encounter the courts or judges in the course of one's normal life, the law and the decisions of the courts can actually affect one's life, sometimes in a profound way. Last year, I said how critical it was for the community that the courts should be able effectively to resolve disputes. This year, I begin by reminding everyone of what can conveniently be called the integrity of the law. This is the foundation of the operation of the law in the Hong Kong Special Administrative Region: this integrity and all its facets are what the community can expect - indeed demand - of its legal system.

The integrity of the law

I begin with the constitutional role of judges. Article 92 of the Basic Law declares that judges are chosen on the basis of their judicial and professional qualities. Each judge is required under the law to take a judicial oath - all in the same words - that he or she will uphold the Basic Law, serve Hong Kong in accordance with the law and safeguard the law without fear of or favour from anyone. It is therefore the law, under which all persons are equal, that is served by Hong Kong's judges and to which the courts owe their loyalty.

The core-activity of the courts is to administer justice in accordance with the law. I am often asked whether the courts take into account the public interest when deciding cases, particularly those cases which involve public law or constitutional principles. Of course they do but this does not mean that in the determination of cases, the courts will look to what sectors of the public or the majority of the public or even the Government may desire as the outcome in any given case. That is not what is meant by the public interest. The public interest that is served by the courts is in the adherence to fundamental concepts of fairness, dignity and justice in the application of the law. I refer to these fundamental concepts because the courts are mandated to apply not just the content of the law but, sometimes more importantly, its spirit. But it is always the law and its spirit that dominate. No one, no institution is above the law.

It is in the nature of a decision in a court case that someone will win the case and, correspondingly, for there to be a loser or losers. And in the area of public law where there may be matters of the utmost social, political or constitutional sensitivity at stake (for example, in immigration matters), the interest of the community as a whole may be engaged as well. In these areas, different sectors of the public representing different interests, will each have radically different and diametrically opposed views as to what they regard as the "right result" in a case. In this type of situation, which can certainly pose challenges for the courts, what will guide the courts in making a just and right decision, knowing that whatever the result, substantial sectors of the public may not be satisfied with it?

The answer is ultimately a simple one and one which, I believe, the public expects. As in all cases that come before the courts for determination, the approach is exactly the same: adherence to the law and its spirit. This is what Hong Kong's courts do every day of the week in relation to every case that comes before them, whether the courts are dealing with simple money disputes, petty crimes or cases of the greatest constitutional importance. And no judge approaches the determination of a case with any pre-conceived ideas: a judge will approach a case with an open mind and always apply the law. It is not within a judge's constitutional mandate to do otherwise.

Crucial to what I have just said about the court's approach in the resolution of cases, is that the court's activities are transparent. Transparency in the judicial process - meaning that it is clear for all to see that the courts and their judges are discharging their

constitutional duty of deciding cases according to law without fear or favour - this transparency must exist as an important part of the integrity of the law.

The transparency in the judicial process is demonstrated by two facets. First, save for limited exceptions, all proceedings in court are open to the public. Any member of the public is able to attend each stage of a court hearing: the opening of a case, the testimony of witnesses, counsel's submissions and the decision of the court or, where there is one, of a jury. The only limited exceptions to this are where the content of the court proceedings are so sensitive that it would not be in the public interest to have an open hearing, such as where the interests of children are involved.

The second facet of the transparency of the judicial process is in the reasoning of the court in arriving at its decision. It is an established feature of Hong Kong's system of law that every decision or judgment of the court will have the reasons for it clearly and explicitly available for all to see. This process of providing reasons serves at least two purposes. First, it enables the immediate parties to the relevant dispute before the court to know the precise grounds for the judgment. This will have particular relevance to the losing party, who would be given an opportunity to appeal the adverse judgment. In Hong Kong, the system of appeals is made effective by the fact that the appellate courts are able to scrutinise closely the reasons for any judgment of the court below. Secondly, from the public's point of view, the court's reasoning in a judgment will enable everyone to see for themselves exactly how the court has applied the law and fulfilled its constitutional mandate. This last point is crucial in my view. As I have indicated earlier, particularly in public law and other high profile cases, sections of the public may hold quite radically different points of view as to what should be the result of a case. It is only by looking at a court's reasoning that the respect for the integrity of the law can be maintained: this reasoning makes acceptable to the public what might otherwise be an unpopular result. It is made acceptable precisely because it can be seen that in arriving at a decision, the court has applied and remained faithful to the law. The Hong Kong community expects its courts and judges to apply the law fairly and equally rather than to determine cases by vague and arbitrary notions of what may be more popular or more attractive as an outcome. The reasoning of our courts is there for all to see. From the District Court to the Court of Final Appeal, the judgments of the courts are readily available to the public on the Judiciary's website without charge.

Of course the feature that provides the foundation of the integrity of the law is the

independence of the Judiciary. I am often asked about the independence of the Judiciary and what evidences the existence of the independence of the Judiciary in Hong Kong. There is no doubt whatsoever in my mind that Hong Kong has a fearless and independent Judiciary, and that the concept of the independence of the Judiciary - a concept that is synonymous with Hong Kong's success in many people's minds - very much exists in Hong Kong. I do not, however, expect that everyone should merely take my word for it, even though it comes from the Chief Justice, but to look at two objective facts. The first of these is the content of the Basic Law itself: that Hong Kong should have an independent Judiciary as part of the constitutional model for Hong Kong, is stipulated in no fewer than three Articles of the Basic Law (Articles 2, 19 and 85).

The second objective fact which demonstrates the existence of an independent Judiciary is something to which I have already made reference: the reasoning that is contained in the court's judgments. This, perhaps more than anything else, shows exactly how the courts and judges in Hong Kong operate in practice.

I have now discussed at some length the way I view the integrity of the law in Hong Kong. As I remarked earlier, the law has been the focus of much attention recently. It is of course inappropriate for me or indeed any judge to comment on individual cases, particularly those cases yet to be heard by the courts, but it is right to remind everyone of the basic framework and foundation of the law in Hong Kong. I would also like to remind everyone of the fact that although the courts do on occasion have to deal with the legal questions arising out of political matters, the courts and their activities ought not to be politicised. I entirely respect the rights of individuals to exercise their freedom of speech - indeed I think it is healthy in a society for this to happen and it is in any event guaranteed as a fundamental right here in Hong Kong - but the courts and judges will not be influenced by the very many different points of view to which one is exposed these days. The courts and judges will at all times adhere only to the law and to its spirit - the community expects nothing less from the Judiciary.

Hong Kong's judges

The independence of the Judiciary requires judges of the highest quality and standing to serve the administration of justice. I have earlier made reference to Article 92 of the Basic Law which provides that members of the Judiciary shall be chosen on the basis of their judicial and professional qualities. These stated qualities provide the only criteria for the appointment of judges and it is of course not difficult to see why. Apart from the Chief Justice and the Chief Judge of the High Court, there is no nationality requirement

in the Basic Law for any other judge. Quite the contrary, the Basic Law (in the same Article 92) refers to members of the Judiciary being able to be recruited from other common law jurisdictions. Consistent with this is Article 94 of the Basic Law which states that the Hong Kong Government may make provision for lawyers from outside Hong Kong (as well as local lawyers) to work and practise in Hong Kong. Hong Kong is after all a common law jurisdiction and recognised worldwide as one. Our courts enjoy an enviable and respected reputation internationally. The Basic Law of course provides that Hong Kong applies the common law. The common law system has served Hong Kong well in the past and will continue to do so in the future. The common law and its operation are ultimately founded on fairness and justice being administered for the benefit of the community and its people.

The power of final adjudication in Hong Kong rests with the Court of Final Appeal, the highest court for Hong Kong. Article 82 of the Basic Law specifically provides that the Court may "as required invite judges from other common law jurisdictions to sit" on the Court. Since July 1, 1997, the Court of Final Appeal in almost all its full appeals has invited a judge from an overseas common law jurisdiction to sit on the Court. These common law judges, comprising holders and former holders of the very highest judicial offices in their respective jurisdictions, have been tremendous assets for the Court of Final Appeal and for Hong Kong. At present, there are 10 judges in the panel of judges from common law jurisdictions: two former Chief Justices of the High Court of Australia, a former Justice of the Supreme Court of New Zealand, three former members of the Supreme Court of the United Kingdom, two present members of the Supreme Court of the United Kingdom, the immediate former President of the Supreme Court of the United Kingdom and the present President of the Supreme Court of the United Kingdom. The presence of these judges has without doubt added a significant dimension to the Court of Final Appeal and its work. Many of the leading judgments in the appeals heard by the Court of Final Appeal have been written by the common law non-permanent judges. It is widely recognised by judges, the legal profession and legal scholars that the "Fifth Judge" (as the common law non-permanent judges have been called) has made a significant contribution to Hong Kong's jurisprudence. They enjoy the confidence of the community and will continue to do so for very many years to come. It is to be remembered that when a common law non-permanent judge is appointed to the Court of Final Appeal, that judge takes the same judicial oath as every other judge in Hong Kong and becomes a Hong Kong judge.

The relocation of the Court of Final Appeal

Finally, I want just to provide an update on the planned relocation of the Court of Final Appeal from its present address at Battery Path to Jackson Road. It is now anticipated that the move will take place in the middle of 2015. This may seem to be a long way off but the project, involving as it does structural tests, careful restoration of the historical features of the old building and of course the design of a functional (and larger) chamber for the Court itself, is a large project. I look forward greatly to seeing the building welcome not just the users of the Court of Final Appeal but also members of the public. It will provide a constant, imposing and unshakeable reminder of the rule of law in Hong Kong.

Conclusion

As we approach the Lunar New Year, having just celebrated Christmas, this is a time to think about one's family. On behalf of all my colleagues, 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 2013 today (January 14).



Mr Ma addresses more than 1,000 attendees, including judges, judicial officers and members of the legal profession, at the Concert Hall of Hong Kong City Hall.