

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 2015 today (January 12):

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.

In the review of any year in Hong Kong, it would be right to make the comment that the community has faced challenges. 2014 was no different and I have no doubt that this year will produce challenges of some sort in Hong Kong. As the community faces these challenges, we must not lose sight of those fundamentals that have benefitted Hong Kong in the past and which continue to do so.

One of the most discussed topics this past year has been the perennially important subject of the rule of law in Hong Kong. An aspect of the discussion has been the extent to which the administration of justice by the courts in Hong Kong is affected by extraneous factors, such as political factors. Politics has featured much in Hong Kong people's lives this past year. The question remains: To what extent is the work of the courts influenced or affected by factors other than the strict application of the law itself, such as politics or political considerations?

The clear answer of course is that the administration of justice by the courts is not, nor can it be, influenced in the slightest by extraneous factors such as politics or political considerations. The courts and our judges apply only the law. The constitutional role of judges is to adjudicate on legal disputes between parties. It is no part of the courts' function to solve political questions, but only to determine legal questions even though the reason for bringing legal proceedings may be a political one.

The rule of law is the foundation of any society and is essential to the cohesion of a community. Hong Kong has over 7 million people who all want, for themselves and their families, to lead a dignified and productive life. They are entitled to. But different people will obviously have different interests and different priorities. Their points of view will differ, sometimes substantially so. The cohesiveness of the law ensures that not only rights, particularly what are commonly referred to as fundamental rights, are enforced but

that there is an equal respect for other people's rights as well. The law and the administration of justice by the courts seek to achieve a just and proper balance of these widely divergent interests and points of view. Put simply, the objective is to ensure that fundamental human rights are properly enforced by the courts, and that individual rights and the rights of others in our community are all respected.

How is this achieved in reality? The starting point is an acceptance that everyone is equal before the law. This includes everyone: the Government, the authorities, members of the public. No person, group of persons or organisation can claim to be above the law nor to enjoy any preferential treatment by the courts. This is key to the notion of respect for the rights of other persons.

Next, it is fundamental to the operation of the law that courts apply only the law and its spirit, and that they do so independently of any outside influences - whether the Government, the authorities, the public or any section of the public.

These features of the rule of law and the administration of justice I have just referred to - equality, fidelity to the law and its spirit, and judicial independence - are fundamental to the operation of the law. They are set out and protected under Hong Kong's constitution, the Basic Law.

The constitutional role of judges to apply only the law is reflected in those provisions of the Basic Law dealing with the exercise of judicial power. Article 84 of the Basic Law states simply that judges shall adjudicate cases in accordance with the law. The Judicial Oath taken by all judges requires adherence to the law and the safeguarding of the law without fear or favour. Elsewhere in the Basic Law, the qualifications of judges are set out: judges are to be chosen on the basis of their judicial and professional qualities alone. The Judicial Officers Recommendation Commission, which makes recommendations to the Chief Executive regarding the appointment of judges, applies these two criteria. There are no other qualifying criteria which are applicable to judges as a whole. For the Chief Justice and the Chief Judge of the High Court there is a nationality requirement in that they have to be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country. There is no such requirement for other judges; the Basic Law provides that judges may be recruited from other common law jurisdictions.

The independence of the Judiciary is of course a key feature of our legal system. The Basic Law makes reference to an independent Judiciary in at least three separate articles. The Judicial Officers Recommendation Commission, to which I have earlier referred, is required to be an independent commission.

In last year's address at the Opening of the Legal Year, I identified those features of our legal system which demonstrated that the existence of the rule of law, including the independence of the Judiciary, was not just theoretical but real. Before I refer to recent events to reinforce this, I would like to provide an update on a few matters affecting the Judiciary and access to justice:

(1) Access to justice is a crucial part of any legal system. There is little point in having a sound legal infrastructure, manned by the best judges, when there are difficulties of access to justice. The Basic Law expressly provides for access to the courts as a right. Legal Aid is an important feature which enhances in a meaningful way access to justice. Legal Aid is available in a number of different types of cases such as applications for judicial review (which often involves persons making legal claims against the Government).

(2) This past year, the Judiciary has been actively reviewing the jurisdictional limits of the District Court as well as the limits of claims in the Small Claims Tribunal, with a view to increasing these limits to facilitate access to the courts.

(3) Recently, the Legislative Council voted to abolish the "as of right" route of appeal to the Court of Final Appeal. This means of access to the Court of Final Appeal is outdated and has no place in a modern system of law. It allows access based purely on monetary value, thereby promoting an inequality (based on monetary value) among litigants. I welcome the removal of this provision in our law.

(4) On the recruitment of judges, this has largely been successful. There are some difficulties in recruitment at the level of the Court of First Instance of the High Court. With this in mind and in order also to address the long-term needs of the whole of the Judiciary, we are conducting various reviews, such as one on the conditions of service of judges and another on retirement age. The important aspect to bear in mind is that it is of crucial importance that the high standards expected of judges are maintained. I have said on many occasions that it is better to leave positions vacant than to have appointments of persons not of the requisite standard.

(5) This year will hopefully see the relocation of the Court of Final Appeal to the former Supreme Court at Jackson Road (formerly also the Legislative Council). We have been advised by the Architectural Services Department that this is feasible. I take this opportunity to express the Judiciary's gratitude to that department for the sterling work they have undertaken for the community's benefit. The new Court of Final Appeal will be a lasting and tangible symbol of Hong Kong's rule of law. I look forward very much to its opening and welcoming members of the public to visit this historic building.

Throughout the year, the operational requirements and initiatives of the Judiciary have been supported by the Administration and the Legislature. I express my gratitude for this support. It is important to the administration of justice by our courts that we have this support and, importantly, that matters relating to the Judiciary are not politicised in any way.

I now turn to recent events. I will naturally not comment on the political aspects of the "occupy" protests, but wish to say something about their relevance to the rule of law in Hong Kong. In my view, these recent events have demonstrated the respect that most people have for the rule of law and emphasised once again the pivotal position it occupies in our community. No one has seriously questioned the need for respect for the rule of law and it is easy to see why this is so: it simply cannot be seriously suggested that the rule of law and all that it stands for should somehow not be respected. The work of the courts, its core activity in the protection of fundamental rights, administering justice equally without fear or favour, is dependent on the knowledge that the community on the whole respects and trusts the rule of law.

The legal proceedings in the courts which took place during the course of the protests demonstrated an adherence to the rule of law. The various injunction proceedings before the Court of First Instance, heard over a number of days by the Judge in charge of the Constitutional and Administrative Law List, meticulously and fastidiously went over every possible legal argument. All parties were given full opportunity to make their submissions before the court. Access to justice was unimpeded; the defendants in the proceedings, represented by Senior Counsel and other experienced counsel, were assisted by Legal Aid. Every step in the proceedings was done according to law and legal procedure, and the proceedings were open to the public to observe.

When the court made its decisions in the various injunction proceedings, it did so according to law and this was plain to see in the detailed, reasoned judgments that were given. When the Court of Appeal rejected applications for leave to appeal from the decisions of the Court of First Instance, the Court again did so explaining in detail the legal reasons for its conclusions. All this illustrates the practice of our courts: deciding cases strictly according to law thereby fulfilling the constitutional mandate of the Judiciary and being seen to do so by their reasoned judgments being made publicly available. This is the rule of law and the administration of justice operating in practice, and this is precisely how the Hong Kong Judiciary operates on a daily basis. It will always continue to do so in this way.

I would add this: Given all I have said as to the painstaking way in which at times difficult legal outcomes are reached, it is to be expected that the judgments and orders of the courts are respected and complied with. The recent injunctions granted by the Court were expected by the community to be complied with. After all, every party, and of course this included the unsuccessful parties, had been given a full opportunity to make

their submissions to the Court. Whatever one's beliefs or motives, the rule of law and all that it represents must be respected by all, whether the Government or the public or sections of it. The rule of law is there to protect our rights and to help achieve the objective of any community: a respect for rights and a respect for the rights of others.

There can be no compromise as far as the rule of law is concerned. It is not something from which there can be any deviation nor can there be any room for bargaining in relation to it. It operates all the time, not just part of the time. The rule of law is an end in itself and stands alone as one of the important institutions contributing not just to the success of Hong Kong, but to the overall and future well-being of her residents.

It is right to remind ourselves yet again of this fundamental feature of Hong Kong society. We assemble here at the annual Opening of the Legal Year, this year and every year, to acknowledge the importance of the rule of law. All our judges know this and, as you will presently hear from the speeches following mine, it is incumbent on all members of the legal profession to know this as well. I believe the community knows this and is certainly entitled to expect this.

It has been an eventful year for all of us. It only remains for me to wish everyone a fulfilling New Year, with good health and much happiness.

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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 2015 today (January 12).



The Chief Justice 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.