

CJ's Speech at Ceremonial Opening of the Legal Year

The following is the full text of the speech delivered by the Hon Chief Justice Mr Andrew Kwok-nang Li at the Ceremonial Opening of the Legal Year 2003 today (January 13):

Secretary for Justice, Mr Chairman, Mr President,

Distinguished Guests, Ladies and Gentlemen,

On behalf of all my colleagues in the Judiciary, I would like to welcome all of you to this Opening of the Legal Year. Your support by your presence is greatly appreciated.

In particular, I would like to extend a warm welcome to the President of the Court of Final Appeal of the Macau Special Administrative Region, President Sam Hou Fai and his senior colleagues. This is their first attendance at this function and we are greatly honoured by their presence.

The rule of law

This is the sixth address which I have the honour of delivering. As I glance back, the last five and a half years have witnessed momentous constitutional developments in the new order. We have had to face various challenges in implementing the imaginative concept of "one country, two systems". In my view, since 1997, the rule of law and an independent Judiciary, which are of cardinal importance, have continued to thrive. Central to the rule of law is the proper and effective protection of the individual rights and freedoms which are at the heart of Hong Kong's separate system.

That the rule of law has continued to thrive is the result of vigilance. As we move forward, it is of the greatest importance that our community continues to exercise strong vigilance on all matters concerning the rule of law. Such vigilance must be exercised by all, by those who have been entrusted to govern as well as by the public, by lawyers who have a special role to play as well as by non-lawyers. And such vigilance must be exercised not only in relation to the enforcement and interpretation of laws but also, in relation to the formulation and enactment of new laws.

In exercising vigilance, debate in the community is essential. And it is always important that debate is conducted calmly, rationally and thoroughly. This applies to discussion of court judgments as well as to debate on the formulation of new laws. Debate on these issues is not and should not be regarded as a tussle of strength involving government and polarised sections of the community, with victories and defeats. It would be a very sad day if this were so.

The community as a whole has the common objective and indeed the shared responsibility of maintaining the rule of law. Many issues concerning the rule of law are inevitably controversial, with diverse views held by different people of goodwill. But with controversial issues, it is all the more important that there is a meaningful dialogue conducted on the basis of mutual respect. There must be a will by all concerned to listen to, understand, and learn from other points of view. This applies to both Government and those who agree with it as well as to their critics. It is only through reasoned and vigorous debate that one can hope to find constructive solutions to difficult problems.

Budgetary constraints

Hong Kong's economy is going through a difficult time and the problem of the budget deficit has to be faced by the community. Understandably there will be cuts in expenditure in the public sector. And this will apply to the Judiciary.

Leaving aside judicial remuneration which I shall come to in a moment, the Judiciary faces substantial reduction in funding as with the whole public sector. In the years ahead, budgetary constraints will pose difficult problems for the Judiciary. Hard decisions will have to be made.

Judges have the constitutional responsibility of administering justice fairly and impartially. As we deal with budgetary constraints, it is of fundamental importance that the quality of justice must not be compromised. Justice must be done and must be seen to be done. Liberty, property and reputation are at stake. In adjudicating disputes, judges cannot cut corners.

The Judiciary is in the course of considering ways to tackle the problems. We will try our best to minimize the impact of the budgetary constraints and will consider all appropriate measures. Measures such as the shelving of capital projects, the possible merger of Magistrates' Courts and rationalisation of resources will have to be explored. Further, the Judiciary will have to reduce the number of temporary judges at all levels and may have to leave some judicial posts vacant.

Despite budgetary constraints, the quality of justice must be maintained, even if the likely consequence is that waiting times will be lengthened at all levels of court. That is, the time taken to obtain a hearing date will be longer than at present. And it may not be possible to maintain the service to the community in areas such as court registries at present levels. I think it is only right that the likely consequences of the budgetary constraints should be frankly explained to the community at an early stage.

In order to economise, I have decided that the Opening of the Legal Year will not continue to be at this wonderful venue in 2004. We will revert back to the City Hall. Although the scale of this function will be reduced at that venue, we hope you will continue to support this important event.

As far as judicial remuneration is concerned, it has been frozen. The Judiciary is of course independent and judicial remuneration is determined separately from the civil service. In May 2002, the Judiciary commissioned a consultancy study on the appropriate system for the determination of judicial remuneration having regard to the experience in a number of overseas jurisdictions. The consultancy study is being conducted by Sir Anthony Mason, the eminent former Chief Justice of Australia and a distinguished non-permanent member of our Court of Final Appeal. When the consultancy study is completed in the first quarter of 2003, judges and judicial officers will be consulted.

After such consultation, a decision will then be made on the proposal to be submitted to the Government on the appropriate system for Hong Kong. It must be appreciated that the consultancy study will not be dealing with actual levels and amounts of remuneration. Its object is to deal with the appropriate system, including the appropriate institutional structure and the factors that are relevant for the determination of judicial remuneration.

Any appropriate system would need to recognize the fundamental principle of the independence of the Judiciary and to have safeguards for protecting that independence. Pending the completion of the consultancy report and consultation with judges and judicial officers, it would not be appropriate for me to say anything more on this subject.

Civil Justice Reform

In response to the Consultative Paper on Civil Justice Reform, 96 submissions were received. Many of these submissions were well considered. They are being studied by the Working Party.

In considering its recommendations for the Final Report, the Working Party has the benefit not only of the many views expressed in these submissions but also of the experience of reform in a number of overseas jurisdictions. In particular, the Woolf reforms in England have been implemented since April 1999 and there have been a number of assessments of their impact both by the Lord Chancellor's Department and by the private sector. There is a great deal which can be learnt from the experience of reform in England and other jurisdictions.

There is of course no such thing as a universal civil justice system that is suitable for all jurisdictions and for all circumstances. The reformed civil justice system must be designed to suit our own circumstances. These include the state of maturity of our legal profession and our Judiciary in the field of civil justice and our smaller size compared to a jurisdiction such as England. For many years, our civil justice system has broadly followed that of England and English case law in this area has therefore been of direct relevance. But with a population of just under 7 million and as an international business and financial centre, Hong Kong can have its own civil justice system adapted to its own circumstances if that is considered to be in our best interests. This issue will no doubt be thoroughly explored by the Working Party. It is expected that the Final Report will be ready in the second half of this year.

Transparency in legal services

There is plainly a public interest in encouraging reasonable transparency in the legal services market. The Consultative Paper on Civil Justice Reform proposed that if the relevant professional rules are not changed, legislation should be considered to ensure that the public is given access to information relevant to a choice of legal representation including information concerning fees, expertise and experience.

In their submission to the Working Party on Civil Justice Reform, the Bar Association stated that there was no need for such legislation since proposals would be put to its membership to revise the relevant rules which, if approved, would achieve the same end. Unfortunately, recent proposals have not been approved by members and no doubt the Working Party will have to consider whether to recommend legislation in this regard.

In recent years, a number of attempts, made by forward looking Bar Councils ably led by successive Chairmen of the Bar, to revise the relevant rules to enhance transparency by enabling more information to be given to the public, have been unsuccessful. This is disappointing. In my view, greater transparency is plainly in the public interest. It is my duty to remind all concerned that the Bar as a profession has the important responsibility to review and revise its rules and practices from time to time to ensure that they continue to be justified in the public interest.

Further increase in the District Court's civil jurisdiction

As from 1 September 2000, the civil jurisdiction of the District Court was increased to \$600,000. This increase has proceeded smoothly due to the efforts of judges and non-judicial staff ably led by Chief District Judge Barnabas Fung. As was stated at that time, subject to review, the jurisdiction will be further increased to \$1 million after two years. The review is being conducted and we will be proposing a further increase probably to \$1 million.

Unrepresented litigants

The Steering Committee chaired by Madam Justice Carlye Chu has been working on the establishment of the Resource Centre for Unrepresented Litigants. The Centre should be ready in the latter half of this year. It will provide various facilities to assist the unrepresented litigant to deal with court procedure. And the Centre will facilitate the unrepresented litigant's access to the various pro bono legal services provided by the profession and others. In establishing the Centre, the fundamental principle that the courts are and are seen to be impartial must be observed.

The increasing number of unrepresented litigants in our courts is a phenomenon which is found in many other jurisdictions. In difficult economic times, it is likely that their number will further increase.

It must however be pointed out that there are some instances, including at the appellate levels, of unrepresented litigants who are abusing the process of the court. I am referring to those litigants who institute claims or appeals on frivolous, vexatious or unreasonable grounds and maintain these at inordinate length, sometimes using offensive language. Such abuses of the courts' process take up an unwarranted amount of limited and valuable judicial resources. The courts will have to consider adopting fair and effective procedures to deal with such cases, including disposing of them summarily, without an oral hearing, after giving the party a sufficient opportunity to make written submissions. The Working Party on Civil Justice Reform has suggested such a proposal for consultation and will no doubt be considering the matter further in its Final Report.

Technology Court

The Technology Court will soon be ready for operation. Although located in the High Court, it will be made available for use by courts and tribunals at all levels. It offers many facilities including those for multi-media presentations and an electronic documentation and exhibits handling system and we will soon be demonstrating them to the profession. The Technology Court offers up to date modern technological facilities and I trust they will be extensively used.

Conclusion

Ladies and gentlemen, it remains for me to wish you on behalf of all my colleagues in the Judiciary good health and every happiness in the new year.

End/Monday, January 13, 2003

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