

Secretary for Justice, Chairman of the Bar, President of the Law Society, distinguished guests, ladies and gentlemen,

On behalf of the Judiciary of the Hong Kong Special Administrative Region (HKSAR), I extend a warm welcome to everyone to the annual Opening of the Legal Year. This is an important occasion for the Judiciary to give its views on aspects of the administration of justice in Hong Kong. Today, I would like to say a few words about the transparency of the operation of the law in our courts, the importance and desirability of being properly informed when making comments about the work of the courts, the plans for new court buildings, extending the retirement age for judges, and lastly, court security. These are different aspects of the administration of justice.

The legal system in Hong Kong is the common law system. This system has been in place for nearly 180 years and has served the community by contributing to Hong Kong's success over the years. It is regarded as vital to the continuing success of Hong Kong, not only from financial or business points of view, but also for everyone in the community as a whole. The common law is expressly mandated for Hong Kong in the Basic Law and there are references, both direct and indirect, in this document that are clearly referable only to a common law system. This is a system that has been regarded as being appropriate for our community. Hong Kong is seen very much to be an established common law jurisdiction.

One characteristic of the common law - perhaps the one that is most often given as representing the common law - is the use of case law or the legal doctrine of following case precedents. There is a practical purpose in this doctrine. It makes the law predictable in that one can be assured that similar legal situations will be dealt with in a similar way. This enables not only there to be certainty in commercial transactions, but allows people also to regulate their daily affairs on a predictable basis.

The existence of case law relies fundamentally on there being reasoned judgments from the courts. The responsibility on the courts to dispense justice carries with it the obligation to provide proper and full reasons for any determination of rights. It is not enough simply to arrive at a decision - whether to establish guilt or to determine proprietary rights or legal obligations - but it becomes necessary to provide full reasons to justify any conclusion reached by the courts. It is often said that the courts only consider the legal merits in order to determine the legal dispute before them. It follows from this

that it is incumbent on a judge to deal in detail with such legal merits in order fully to justify any determination that is made. This is of considerable importance, because providing reasoned judgments ensures that the courts do decide cases strictly according to law and nothing else. It is important for everyone to see that applying the law is key and that there are no extraneous factors in arriving at the determination of a legal dispute.

The Basic Law states that the HKSAR enjoys and is vested with independent judicial power. The term "independent" is a reference to the independence of the judiciary. We have an independent judiciary in Hong Kong. The term "judicial power" means the power vested in courts to apply the law and determine legal disputes, including the power to make enforceable judgments which, for example, have the effect of ordering persons to make payments of money, or declaring rights to exist or not exist, or declaring public acts to be unconstitutional and therefore void, or (in criminal proceedings) ordering the imprisonment of convicted persons. The enforcement of the law therefore carries with it the power of imposing legal sanctions. Last year, I spoke of the statue of justice, Themis, holding scales on one hand and a sword on the other.

With such responsibilities on the Judiciary, it accordingly becomes essential that its work is completely transparent to members of the public. The transparency that is the characteristic of Hong Kong's common law system comes in two obvious forms. First, it is important to be reminded that almost all of the proceedings in Hong Kong's courts are open to the public to observe. This applies whether in the magistrates' courts or in the Court of Final Appeal. The only occasion when the public is not permitted to attend court proceedings is when there are established exceptions that are dealt with, such as children or in certain injunction proceedings. The second aspect of transparency is that the judgments of the courts containing the reasons in arriving at the legal result are published or made publicly available. This means that any member of the public can scrutinise every judgment of the courts. Where judgments are not in writing, they will be announced in open court. Where such judgments are written, whether in Chinese or English, save in exceptional circumstances, they will be published and made readily accessible on the Judiciary's website.

The transparency of Hong Kong's legal system is an important part of its structure. Apart from enabling any interested observer to access the precise reasons of the courts in reaching decisions in legal disputes, some of which attract much public controversy, they also enable members of the public to make informed comments on the courts, judges and the judicial system. As both my predecessor, Chief Justice Andrew Li, and I have consistently said over the years, it is healthy that members of the community take an interest in the operation of the law, in the administration of justice and in all aspects of the rule of law in Hong Kong. Criticism of the Judiciary can be constructive in that they

enable improvements to be made where necessary. The Judiciary has always been amenable to constructive suggestions in order to help make improvements.

There is, however, one point that needs to be reiterated. Any criticisms which are levelled against the Judiciary should be on an informed basis. The same applies to any praise which may be made as well. Both types of comment should be made on an informed basis. Sometimes, there may be a tendency to associate what may be the desired result in court proceedings with the integrity of the court system itself or with the integrity of the judge or judges involved. This is particularly so in those high profile cases that Hong Kong has seen in recent years. These are the types of cases that emanate from political, economic or social origins. It is therefore essential that any comments that may be made about the work of the Judiciary, whether seemingly positive or negative, should be done on an informed basis. But what does this actually mean and why is it important?

I answer the second part of the question first. To the vast majority of people in Hong Kong - or indeed anywhere - the existence of the rule of law is important. Any unwarranted criticisms made against the rule of law cannot be of any benefit to the community.

What does an "informed basis" mean as far as Hong Kong's legal system is concerned? I have already said something earlier to introduce Hong Kong's common law system. There are three points I wish to emphasise in the context of understanding the operation of the law in Hong Kong:

1. First, the Judicial Oath taken by all judges. In this oath, which is a solemn undertaking, all judges swear to uphold the Basic Law and to serve Hong Kong conscientiously, dutifully, in full accordance with the law and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit. This is reflected in the Basic Law, in which it is stated that all judges shall be chosen on the basis of their judicial and professional qualities. There is accordingly a constitutional duty on judges to adhere to the law, and only apply the law, and to do so independently.
2. Secondly, the content of the law itself. When courts determine cases in accordance with the law, they do so on a principled basis and not arbitrarily. All are equal before the law. It can rightly be said that the starting point of the content of the law is the Basic Law itself. Apart from the provisions I have earlier referred to regarding independent judicial power, the Basic Law also contains

provisions which expressly set out rights. Such rights are contained in Chapter III of the Basic Law and include the important right of equality, the right to vote, the freedom of speech, the freedom of the press and of publication, and so on.

3. Thirdly, apart from the contents of actual laws, that is laws which are written such as the Basic Law and statutes, courts also apply what is known as the spirit of the law. Essentially, the spirit of the law means the application of the true meaning and purpose of any law. For example, in the application of rights, a generous and liberal approach is preferred, but always bearing in mind the need at times to weigh in the balance a respect for the rights of others in the community, and the need to apply all laws equally and consistently. The public interest in its various forms relevant to the rule of law must at all times be borne in mind as well.

Courts and judges are concerned only with the law and the legal issues which arise in any dispute to be determined by them. It is not relevant, nor is it any part of their constitutional duty to adjudicate on political, economic or social issues as such without reference to the law. In particular, political or other affiliations or biases are simply not relevant at all, whether in favour of or detrimental to the person involved.

It accordingly becomes necessary to ensure that in arriving at any decision, a judge only takes into account strictly legal considerations and this is made clear in any judgment. And, as mentioned earlier, all written judgments of the courts in Hong Kong are generally made available to the public, so that people can see for themselves that any judgment of our courts is arrived at only by applying the law, without any outside factors being taken into account.

This ability, indeed it is an entitlement, of the public to see precisely how our courts and judges operate - in other words the transparency of Hong Kong's legal system - is a crucial characteristic of our system of law. The answer to the question of why and how courts have arrived at their decisions is plain for everyone to see. Whether or not one chooses to make use of materials which are available to explain the reasons for any court decision (and this includes, for example as well, the case summaries and the press summaries of judgments given in the Court of Final Appeal) is of course up to the individual, but if an informed commentary is to be made, it would be surprising if these were not looked at beforehand.

Last year I spoke of the need to maintain the highest possible standards within the Judiciary and to ensure that every member of the Judiciary is committed to his or her

constitutional duties owed to the community. Hong Kong courts deal with very heavy caseloads. This is reflected not only in the high volume of cases dealt with by our courts in both civil and criminal cases, but also in the considerable complexity of many of the cases. In the civil and commercial courts, many litigants choose to litigate in our courts precisely because of the professional ability and independence of our judges. They and their legal advisors have confidence in the legal system here as a means of fairly resolving the very many serious legal disputes that arise.

The considerable volume of cases dealt with by the courts underlines not only the constant necessity of having the best quality judges but also a sound infrastructure. Here, the Judiciary requires the support of the Government, the Legislative Council and indeed the community as a whole. I am extremely grateful for the considerable support given to the Judiciary in the past, and look forward to this continuing in the future. There are two important initiatives that I would like to mention at this stage:

1. First, I am grateful for the Government's support for the relocation of the High Court from its present location in Queensway to the site known as Site 5 of the new Central Harbourfront (next to the Legislative Council Complex) and for the construction of a new District Court Complex at Caroline Hill Road in Causeway Bay to house the District Court, the Family Court and the Lands Tribunal. These initiatives were outlined in the Chief Executive's Policy Address made on October 11, 2017. That was an important day. These projects will address the accommodation requirements of the Judiciary at the District Court and High Court levels. I hope that they will be given the necessary support from all concerned.
2. Secondly, last month I have also written to the Government providing detailed submissions on the extension of the retirement ages for judges. This is a topic that has been much discussed in the past few years. The Judiciary has engaged a consultant for this purpose and the consultant has provided a report which has formed the basis of the submissions made to the Government. The present retirement ages have been in existence for many years and in my view are outdated. More important, they also pose significant difficulties in the recruitment and retention of judges. As I mentioned in last year's speech at the Opening of the Legal Year, legal practitioners already face a very significant decline in earnings when they join the Judiciary. Coupled with what by world standards is a low retirement age, this provides a further disincentive for what is already a limited pool of potential practitioners wishing to join the Judiciary. I hope that the Government, legislators and all concerned with the law will give their support to this initiative. It is proposed that:

- (a) the retirement age for magistrates be increased from 60 to 65;
- (b) notwithstanding the retirement age for judges of the District Court remaining at 65, there be allowance for an extension of the term of service beyond this age, which is not available at present; and
- (c) for judges above the rank of District Court, the relevant retirement age be extended from 65 to 70.

I believe that these proposals extending the retirement age of judges will be of considerable tangible benefit to the community. Not only would judges be able to give the benefit of their experience and skills beyond the present low retirement ages, this will encourage recruitment of the most able persons to join the Judiciary. Given the shortage of judges particularly at the High Court level, I hope that the necessary legislation can be effected within the next two years. This initiative is, as I have said, of significant tangible benefit to Hong Kong.

Finally, I want to say a few words about court security. It is of course important that all users of our courts and who enter court premises are kept safe and made to feel secure. This includes litigants, witnesses, judges and court staff. The Judiciary has always accorded the highest priority to court security and this subject is under constant monitoring. Some recent events and the concerns from the public following these events, however, have led to increased measures to be devised, some of which have already been implemented. For example, there is an enhanced police presence in the High Court and in the District Court, including the Family Court. In the Family Court, all persons entering courtrooms have to undergo security screening. Security screening will be introduced as well in the High Court. We will of course work closely with relevant court users. It is expected that this will be introduced in the near future. We have already informed the Legislative Council of the Judiciary's plans in this regard.

The Judiciary in Hong Kong serves the community as best as it possibly can. Its judges and staff are totally committed to this. We are grateful for the support this institution clearly has from the community. It is in everyone's interest that the rule of law remains strong, respected and visible.

I wish you and your families good health, happiness and fulfilment in 2018 and in the Year of the Dog. Thank you.

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