

**Speech by The Honourable Chief Justice Geoffrey Ma
at the 20th Anniversary of the Establishment of the
Hong Kong Special Administrative Region
2 June 2017
Vancouver, Canada**

1. It is a great honour to be invited to this commemorative dinner and to say a few words as we celebrate the 20th anniversary of the establishment of the Hong Kong Special Administrative Region. Throughout this month and the next, there are many such similar events in Hong Kong and probably around the World. It is certainly a significant milestone in Hong Kong's history. Nearly 20 years ago, on 1 July 1997, the People's Republic of China resumed the exercise of sovereignty over Hong Kong (this is the correct, official term). That is also the date when the document which was stated to ensure implementation of the basic policies of the Central People's Government regarding Hong Kong – this is of course the Basic Law – came into

effect. I shall be saying a little more about the Basic Law later. It is of crucial importance as it represents the constitutional position regarding Hong Kong.

2. For as long as I can remember, Hong Kong has faced challenges every year, each new challenge seeming to eclipse the previous one in terms of intensity and importance. Those fundamental institutions which we have long taken for granted appear to be challenged and prophecies ranging from optimistic to pessimistic, are circulated. One can then hardly blame many members of the public being confused by all this. However, the answer to any confusion or any uncertainty caused by events remains now as simple as it has always been – to revert to basic principles and to look to institutions which over the years have provided stability to the community.

3. One such institution (seemingly under challenge and certainly prominent in the news these days) which I believe has provided this reassurance to Hong Kong over the years is what we call the rule of law. You will all instantly recognize the term. It is one of the features often used by the Government (and within it the Economic and Trade Offices in many countries) and the business community to promote Hong Kong. But it does much more than that. The rule of law is relevant not only to interests such as the business community or to promoters of investment in Hong Kong, but to everyone in Hong Kong. It means at its heart that everyone in the community, equally and without exception, has fundamental rights and liberties that are and ought to be protected in a real way.

4. It is here useful to help identify just what is involved in the term the rule of law. On a practical level, and

not a legal philosophical one, it means first, the existence of a set of rules or norms which recognize the fundamental rights and liberties – in short, the dignity – of each member of society; and secondly, the presence of an institution which is independent and which enforces these rules and norms to their fullest extent. These rules or norms are usually known as laws; the institution enforcing the law is the Judiciary.

5. The rule of law, as we in Hong Kong (and indeed any community) aspire to, exists both in form and more important, as I hope objective facts will show, in substance in Hong Kong.

6. As a matter of form, the Basic Law which, as I have already mentioned, sets out the constitutional position regarding Hong Kong and its position within the PRC clearly

reflects the rule of law as I have defined it. I highlight the following features in the Basic Law :-

- (1) A whole chapter (Chapter III) is headed “Fundamental Rights and Duties of the Residents”. In this chapter are spelt out the established rights of permanent residence, equality, the right to vote, the freedom of speech, the freedom of the press, the freedom of demonstration, the right to privacy, freedom of conscience, access to justice, the freedom of marriage and so on. In one of the articles under this chapter is a reference to the applicability of the International Convention for Civil and Political Rights (commonly referred to as the ICCPR) which, as far as they apply in Hong Kong, are set out in the Hong Kong Bill of Rights Ordinance. Apart from those rights and freedoms I

have already mentioned (which are repeated), there are also set out in the Bill of Rights other rights such as the right to life, the right not to be subject to slavery, the liberty of movement, the rights of minorities. Elsewhere in the Basic Law are protections given to the ownership of property and academic freedom. These rights and freedoms I have just enumerated encapsulate the first part of the rule of law as I have defined it.

- (2) As to the exercise of judicial power, the Basic Law refers to the concept of Hong Kong having independent judicial power. The importance of this can be seen by the fact that, unusual for a constitutional document, this is repeated 3 times in the Basic Law.

7. The substance of the rule of law – in other words, its existence in Hong Kong as a matter of reality – is of course the more important aspect to consider. This is a matter for you to evaluate but I would suggest, only after considering a number of objective indicators. The existence of the rule of law in any given jurisdiction, Hong Kong in our case, can only be properly considered empirically :-

- (1) The reality of fundamental rights and liberties of residents in Hong Kong (and this includes not only people but also corporate entities) depends on their recognition and enforcement. The focus of the inquiry here ought therefore to be on the work of the Judiciary.

- (2) The work of the courts, if this is to demonstrate that the rights and liberties guaranteed constitutionally

are actually enforced, must be transparent. Transparency is a recognized way of testing the existence of the rule of law. Transparency in the work of the courts comes in 2 forms: the openness of court proceedings, meaning whether the general public is entitled to observe freely such proceedings; and the availability for public inspection the methodology and reasoning of judges in reaching their decisions in any given case (in short, the judgments of the court). In Hong Kong, all proceedings (except for highly sensitive cases such as when children are involved) are open to the public and the public is entitled to attend all court hearings at every level from the magistrates' courts through to the highest court, the Court of Final Appeal. As for the judgments of the courts, these are again freely available for public scrutiny. The

reasoned judgments of the courts are published in hard copy form as well as to be found on the internet. The Judiciary's websites (that of the Judiciary as a whole as well as the CFA's own website) contain links to judgments.

- (3) The quality of judges in any Judiciary must also be relevant. Are judges to be appointed only according to their judicial and professional qualities or is there some other qualifying factor? The Basic Law states the only factors to be considered in the appointment of judges are exactly judicial and professional qualities. The Basic Law also states that judges may be recruited from other common law jurisdictions.

(4) On this note, as far as the Court of Final Appeal is concerned, another provision in the Basic Law prescribes that judges from other common law jurisdictions may as required be invited to sit on our highest court. It is a point of some significance that Hong Kong now has a panel of 12 judges from other common law jurisdictions who are invited to sit in substantive appeals to the CFA. These comprise both current and retired judges of the Supreme Court of the United Kingdom (including the present and immediate past President of that Court), retired judges from the High Court of Australia (including former Chief Justices) and judges from New Zealand. These Non-Permanent Judges (as they are called) have, since 1997, sat in all but very few of the appeals to the Court of Final Appeal and they have made a significant contribution to the

jurisprudence of our courts. The presence in the Court of Final Appeal of eminent and experienced judges from other common law jurisdictions has contributed much to the international recognition of Hong Kong as an established common law jurisdiction and, I am constantly told, to the confidence with which international investors and the business community regard Hong Kong.

8. The importance of the rule of law to Hong Kong has, in the course of my own career in the law, been immense. But we must look to the future. And doing just that, I think that we can learn much from the past 20 years.

9. The Basic Law, the product of the Joint Declaration between the Chinese and British Governments in 1984, reflects the basic policy that those institutions which had

served Hong Kong well in the past and which had contributed to its well-being, ought to continue. So, for instance, we have the continuation of (not in any order) the protection of the right of private ownership of property; the right of individual and legal persons to acquire, use, dispose of and inherit property; the ability of Hong Kong to have separate finances from the Mainland and to have a separate system of taxation; the preservation of the territory as an international finance centre; the right to have a separate currency; Hong Kong's status as free port and to be a separate customs territory; the maintenance of the system of shipping management and regulation; the maintenance as a centre of international and regional aviation; and the list goes on. Regarding law, I have already made reference to the maintenance of the rule of law. Early on in the Basic Law where the General Principles are set out, these include the important references to Hong Kong

having independent judicial power and the obligation to safeguard rights and freedoms in accordance with law.

10. So what of the future? Just as one of the important themes of the Basic Law was the continuation of all those institutions which had contributed to the great success that Hong Kong has enjoyed over the years, we should be looking ahead to preserving those institutions which continue to and will in the future serve Hong Kong's interests. I believe our system of law in Hong Kong is exactly one of such institutions. Improvements can of course be made but the structure is fundamentally sound. That is the thought I want to leave everyone with this evening.

11. To conclude, some may ask just what is really involved in all these celebrations of 20 years since the establishment of the HKSAR. For me and for many people,

they are celebrations of all that is good in Hong Kong, all that is good for Hong Kong, and all that will be good in and for Hong Kong.
