

CJ's address at Ceremony for the Admission of the New Senior Counsel

The following is the full text of an address by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, at the Ceremony for the Admission of the New Senior Counsel today (June 22):

Secretary for Justice, Chairman of the Bar, President of the Law Society, fellow judges, ladies and gentlemen,

I again extend a welcome to you in this special ceremony to mark the occasion of the admission to the rank of Senior Counsel of Ms Eva Sit, Mr Jenkin Suen, Ms Rachel Lam and Mr Laurence Li. I warmly congratulate each of them, their families, friends and their professional colleagues. The occasion marks a personal milestone in their careers, the full significance of which can only really be understood by them. It is also an occasion of great joy because their personal triumph is shared and witnessed by their loved ones, their colleagues and friends, and by a respectful Bench of judges who, I can assure you, hold you in the highest esteem.

For me, your appointment as Senior Counsel of course acknowledges you already have stellar practices but this is really just the starting point and marks the minimum threshold (albeit a very high one) to becoming a leader of the Bar (as all Senior Counsel are). Beyond this threshold are other qualities which are relevant to considering the role that leaders of the Bar, indeed the legal profession, are expected to assume in the community. In this context, it is important to look to the future. Your past achievements are there for all to see but the community is keen to know just what contribution you will from now on be making to the community in your new role. Whatever may have been the traditional view of what it meant to take silk - and many people in the past have regarded this merely as a badge of honour which propelled one's practice to another level - it is now certainly expected that a person with the initials "SC" after their name will discharge responsibilities and have duties to further community interests.

Such community interests may come in different forms but one aspect of the public interest that is uncontroversial is the promotion of the rule of law and the proper, unbiased understanding of it. Much has been written, debated and said about the rule of law but fundamentally it means the existence and enforcement by an independent judiciary of laws that respect human dignity and effort in a way that recognises legal content, legal substance and the spirit of the law.

The importance of the rule of law in Hong Kong is discussed almost on a daily basis. The community wishes to be reassured that it truly exists in Hong Kong. How does one go about that? I have long maintained that it is not enough simply to say it exists and then expect (or hope) that the listener sufficiently respects or likes you to take your word for it. This is no basis to convince the target audience of something as important as the rule of law. One needs to convince by persuading the listener to analyse the question and then come up with conclusions based on objective, empirical factors.

Each person who wants to look at the concept of the rule of law in a dispassionate (meaning objective) way should have a list of factors to make an evaluation. In 2015, I was asked by the Bar of England and Wales to deliver the annual International Rule of Law Lecture. The title of my lecture was "Strength and Fragility in Tandem: The Rule of Law in Hong Kong". In that lecture, I listed six indicators of the rule of law as far as the independence of the judiciary and the administration of justice in Hong Kong are concerned. I have often referred to them since then. They are not meant to be exhaustive but they are the factors I regard as important:

(1) First, the transparency of the legal system. The public in Hong Kong is able to attend and observe any court proceedings from the Magistrates' Courts to the Court of Final Appeal, save in a very few exceptional circumstances where confidentiality is necessary, such as where the identity of children is involved.

(2) Secondly, the public has access to the reasons for the outcome of any court proceedings. In criminal proceedings, reasons are given for the outcome in the courts

(with the exception of jury trials in the Court of First Instance where reasons for verdict are not given by the jury, although the judge's directions to the jury are given in open court). Similarly in civil proceedings where the reasons for a decision made by the courts are open for the parties and the public to see. The applicable law (whether in the Basic Law, statutes or in cases decided by the courts) are all publicly accessible.

(3) Thirdly, the reasons provided for any judicial decision will precisely reveal the thought processes of the court and enable the public to verify that all decisions have been made according to law and according to the spirit of the law.

(4) Fourthly, the system of the appointment of judges is also an important factor. In Hong Kong, recommendations for the appointment of judges at all levels (including the Chief Justice) are made by an independent commission, the Judicial Officers Recommendation Commission.

(5) Fifthly, access to justice. This is self-explanatory. It raises the question of how in practice the constitutional right to access to the courts (contained in the Basic Law and in the Bill of Rights) exists.

(6) Sixthly, the views of those persons who are in regular contact with the legal system matter. I include here in particular the views of the legal profession.

These six factors - I accept there may be more - enable an objective assessment to be made of the existence of the rule of law in Hong Kong. Each of these factors involves the legal profession, the members of which all have the duty to promote a proper understanding of the rule of law and also to stand up for it whenever it has been unfairly criticised or sought to be undermined. It goes without saying that the leaders of the legal profession have this responsibility and such leaders include especially the leaders at the Hong Kong Bar.

I entertain no doubt that our new Senior Counsel will discharge their responsibilities in this regard. This is one of the qualities going beyond what I have earlier called the minimum threshold.

Ms Eva Sit has a formidable reputation in public and company law. Even as a junior, she has been widely regarded as one of the leading barristers in Hong Kong. She also has a strong belief that the Bar and its leaders should have a societal role in promoting the rule of law and explaining this to the community. As one of her referees also said and this also needs to be emphasised, "her integrity is exemplary".

Mr Jenkin Suen specialises in public law, land and planning law and company law, and has sat as a Deputy Registrar in the High Court. He is fully aware of the wider duties and community based role which his status as a Senior Counsel will entail. He is also keen to assist younger barristers. As he puts it, "I have taken it upon myself to instil in them, by words and deeds, the paramount importance of integrity at the Bar and the overriding duties we owe to the courts".

Ms Rachel Lam, the third graduate from Oxford today (the other only studied at Harvard and Yale) has a large practice in insolvency, commercial and company litigation, as well as in the regulatory and securities field. Like the other new Senior Counsel today, she makes a point of the need to help the next generation and the community as a whole. It is also telling that she abides by that well-known quote from CS Lewis, "Integrity is doing the right thing, even when no one is watching".

Mr Laurence Li has already established himself as perhaps the foremost practitioner in securities and regulatory law. He is the author of "Securities and Futures Ordinance: Commentary and Annotations". He also sits as a judge of the Regulatory Tribunal under the International Court in Qatar (the Court is now headed by Lord Thomas of Cwmgiedd). His integrity is also beyond question. As one of his referees puts it, "I have found him to be a person of the utmost integrity - someone whose word can be relied upon without question and somebody who truly reflects the traditions of the bar".

As we look to the future, many people (especially me) look forward to seeing how all four of you will fare and how you will contribute to the community. Hong Kong needs people like you. For me, you were all obvious choices to be appointed Senior Counsel. I once again congratulate you, your families and friends.

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