

CJ's Speech at Ceremonial Opening of Legal Year 2004

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 2004 today (January 12):

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 extend a warm welcome to all of you on this Opening of the Legal Year back at our traditional venue at the City Hall. Your support by your presence is greatly appreciated.

The rule of law

When I spoke at this function in January last year, I emphasised that the continued vigour of the rule of law in our community must depend on eternal and strong vigilance: vigilance to be exercised by all, by those who have been entrusted to govern as well as by the public. And vigilance to be exercised at all times, not only in relation to the enforcement and interpretation of laws but also, the formulation and enactment of new laws.

Impressive vigilance has been exercised by our citizens over the rule of law. There is no doubt that our citizens have high expectations that the rule of law will continue to be vigorously maintained and that their guaranteed rights and freedoms will continue to be effectively protected. The unequivocal voice of our citizens that the rule of law represents an immutable value of our society must be fully appreciated and understood by everyone in the community: in particular, by those holding and exercising powers of government, whether executive, legislative or judicial.

Judicial conduct

It is fundamental to the rule of law that the Judiciary is and must be seen to be independent. Judicial independence is not a privilege but is essential to enable judges to perform their constitutional role of adjudicating disputes between citizens and between citizen and government fairly and impartially. In approaching the discharge of their duties, judges do so in a spirit of humility.

The most valuable asset of the Judiciary is its collective reputation. As has been pointed out wisely by Shakespeare, good name is the immediate jewel of one's soul; the purest treasure mortal times afford is spotless reputation.

In order to protect and enhance the Judiciary's reputation, it is of fundamental importance that judges must at all times observe the highest standards of conduct and integrity. This is essential for the maintenance of public confidence in the Judiciary and the administration of justice. Judges must do their utmost to uphold the independence and impartiality of the Judiciary and to preserve the dignity and the standing of the judicial office. Each judge owes a responsibility in this regard and I am sure that each judge fully understands the great importance of this responsibility. To discharge it effectively, a high degree of alertness is called for and considerable caution has to be exercised.

Whilst judges must be and must be seen to be independent and impartial, they are not isolated from the community. On the contrary, they are part of the community which they serve. They live, breathe and think in the real world. They have families and friends. They are exposed to the media like everyone else. Through their daily lives, they have contact with people from all walks of life. Whilst judges are members of the community, it must however be recognised and accepted that there are proper limitations and restraints on a judge's extrajudicial activities. They are necessary for the purpose of maintaining the independence and impartiality of the Judiciary and the dignity and the standing of the judicial office.

In recent years, a number of jurisdictions have developed guides to judicial conduct. I have been following these developments and considering what may be appropriate for Hong Kong.

Some 16 months ago, in September 2002, I appointed a Working Party to advise on the subject. It is chaired by the Chief Judge of the High Court *ex officio* and comprises judges at various levels of court. In December 2002, after consultation with judges, the Working Party recommended that a Guide to Judicial Conduct should be drafted to provide judges with useful and practical guidelines on judicial conduct, including in the area of out of court activities and that it should be made available to the public to increase transparency. In January 2003, I accepted these recommendations and requested the Working Party to proceed to draft and recommend an appropriate Guide. With the change of Chief Judge in the middle of last year, and with new developments in other jurisdictions during last year, the work has not yet been completed. But steady progress has been made and completion is expected in the course of this year.

The Working Party has been and will be consulting judges in the course of its work. Matters relating to judicial conduct arise in many varied situations and involve the exercise of practical judgment with common sense. The Guide should be of assistance to judges in making sound and balanced judgment in these matters.

Unrepresented litigants

In January 2002, I announced the decision to establish a resource centre for unrepresented litigants in civil proceedings in the High Court and the District Court. As a result of the dedicated efforts of the Steering Committee ably led by Madam Justice Carlye Chu, the Centre with premises in the High Court commenced operation about three weeks ago. In

establishing the Centre, the fundamental principle that the courts are and must be seen to be impartial must be observed. The Judiciary therefore cannot provide legal advice on the merits of any case at the Centre. Its objective is to provide assistance to unrepresented litigants to deal with court procedure.

Pro bono legal services

The provision of legal advice for unrepresented litigants will have to continue to be done by the legal profession and various non-governmental organisations offering pro bono services. The demand for free legal services extends beyond the litigation context to situations encountered by citizens in their daily lives. Indeed, sound legal advice at an early stage may be of considerable benefit as it may help to avoid litigation. There are a number of organisations offering legal services. These include the Bar Free Legal Service Scheme, the Legal Advice Scheme of the Duty Lawyer Scheme, and the legal advice schemes of a number of Women's Federations. I would like to take this opportunity to pay tribute to the many lawyers who are already contributing to these worthwhile projects.

But the meritorious demand for free legal services is substantial and the legal profession must do its utmost to respond. Although the profession has to operate in the context of rapid changes, it cannot be regarded entirely as a business focused only on the relentless drive for billable hours. It must always remain a vocation of service with a regard for the public good. As a good professional citizen, the lawyer must contribute a fair share to pro bono work. With about 840 barristers and about 5,200 solicitors in practice, a contribution of 1% of their time would mean that the equivalent of about 60 full time lawyers would be available. And a contribution of about 5% would amount to about 300 full time lawyers. This would make a most significant contribution. It is important for any society to ensure that there is access to legal advice and justice by all and I would urge all lawyers to answer this call to duty.

Civil Justice Reform

The Working Party on Civil Justice Reform is in the final stages of its deliberations. Its Final Report is expected to be ready in about March. It has carefully considered the submissions to it and its Final Report will no doubt deal with and be responsive to the many well considered views submitted. It has also followed and studied the experiences of other jurisdictions, including the assessments made of the Woolf reforms implemented in England since 1999. I am confident that the Working Party will recommend a system which is designed to suit Hong Kong's own circumstances and that its recommendations will enjoy broad support from the legal profession and the public.

Mediation

Mediation is now gradually becoming established in many common law jurisdictions as an alternative method of dispute resolution to litigation. Mediation has certain advantages over litigation. Whereas adversarial litigation fought out to the end results in an all or nothing outcome, mediation may bring about a more satisfactory resolution of the dispute

for the parties with less stress in the process. Further, where a dispute is successfully mediated, it is usually speedier and less costly compared to litigation.

We have tried mediation in the matrimonial field with promising results. The Judiciary's Pilot Scheme on Family Mediation ran for three years from May 2000. Mediation was by consent and was conducted by mediators coming from the Social Welfare Department, various non-governmental organisations and the legal profession. The scheme achieved a good success rate, with about 70% of disputes reaching full agreement and a further 10% or so reaching partial settlement. The Scheme is being evaluated by Hong Kong Polytechnic University.

Further, rules of court reforming ancillary relief procedures in matrimonial cases came into operation about two weeks ago on 29 December. This is a pilot exercise. These rules provide that at a certain stage of the proceedings, the possible settlement of the dispute will be explored and the judge, where appropriate, will attempt to facilitate settlement. Where settlement is not reached, another judge will conduct the trial.

Consistent with developments in other jurisdictions, we should continue to explore appropriate opportunities for the use of mediation in resolving disputes. To facilitate the greater use of mediation, it is important that the Director of Legal Aid should be conferred by the relevant legislation with the discretion to grant legal aid for mediation. Such discretion should certainly cover matrimonial disputes which account for about one third of civil legal aid costs but it should also extend to other areas. How the discretion should be exercised by the Director in a particular case would depend on all the circumstances, including the suitability of mediation in the case in question and the likely saving as to time and costs.

The Legal Aid Department has made an important contribution to the provision of legal services in the past. But in this fast changing world, what has worked in the past is not a reliable guide as to how future challenges could be met. It is important for all concerned to think positively and experiment with new ideas. The suggestion that the Director of Legal Aid be given the discretion to grant legal aid for mediation should be actively explored. I believe this to be in the public interest as the use of mediation in appropriate cases could achieve a more satisfactory solution for the parties and could achieve significant savings for the public purse.

Budgetary constraints

As with all institutions funded from the public purse, the Judiciary is facing budgetary constraints and is doing its best to deal with the problems posed. To achieve savings and economy of scale, Western, North Kowloon and Tsuen Wan Magistracies will be merged with other Magistracies over a two-year period. The merger of Western with Eastern already took effect from 2 January. This process involves relocating the courts at the closed Magistracies to other Magistracies which at present have spare court rooms. Further, in view of budgetary constraints, we will be reducing the number of deputies at all levels of court.

In the face of budgetary constraints, we must do what we can to keep down waiting times. As a result, the workload of each judge has increased and will continue to increase. I must pay tribute to all judges at all levels of court as well as supporting staff for their dedicated efforts in coping with the challenges posed. The work pressure is likely to increase. But I am sure that the community can rely on all judges and supporting staff to consider always what is best for the administration of justice and to do their utmost to meet community expectations. As I pointed out in my address last year, the quality of justice must be maintained and cannot be compromised.

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.

Ends/Monday, January 12, 2004

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