

## Speech by the Chief Justice at the Opening of the Legal Year

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Following is the speech by the Chief Justice, Mr Andrew Kwok-nang Li at the Ceremonial Opening of the Legal Year 2000 today (Monday):

Secretary for Justice, Mr Chairman, Mr President, Distinguished Guests, Ladies and Gentlemen,

Standing at the threshold of the new millennium, may I begin by warmly welcoming all of you on behalf of all my colleagues in the Judiciary to this Opening of the Legal Year. We thank you sincerely for coming. Your presence on this important occasion is an expression of your support for the rule of law and the administration of justice. Your continued support is encouraging and of the greatest importance.

### Constitutional jurisprudence

The year 1999 was a momentous year for the development of constitutional jurisprudence in the new order. The courts and in particular, the Court of Final Appeal, had to decide a number of important constitutional issues on the interpretation of the Basic Law. By reason of their subject matter, these judgments were inevitably controversial, whatever the outcome of the cases in question. These judgments have been vigorously debated in the community as they should be in a society that values the freedom of expression. Commentators both in and outside Hong Kong come from a wide spectrum of people with differing values and perspectives. And the various judgments have both their detractors and supporters. Most of the views expressed were well informed, well considered and free from political invective.

In this context, it is important for the community to understand that to protect and ensure the independence of the Judiciary, it would not be appropriate for judges to have to defend their judgments in the political arena. That being so, I must make two points. First, it is important for any court decision to be discussed always in an objective and rational manner. Secondly, where the courts come under unwarranted attack, it is the constitutional responsibility of the Government, that is the executive authorities, to explain and defend the fundamental principle of judicial independence, whether or not the decision in question is in its favour. I am sure that the Government understands and accepts the importance of that responsibility.

As we move forward in the new millennium, the courts will continue to face difficult and challenging constitutional issues. With as innovative a concept as "one country, two systems", the jurisprudence could only develop over time. The Judiciary is determined to maintain the rule of law in Hong Kong. We do not underestimate the challenge involved. Nor do we belittle the concern which some people have expressed. Indeed we treat their expression of concern as vigilance. But let me make one thing perfectly clear. I am fully

confident that the rule of law in Hong Kong will not fade. Instead it will continue to thrive in all its vigour.

### Access to justice

In a society governed by the rule of law, the legal system must ensure that the citizen has access to justice at reasonable cost and speed. To meet community expectations, the court system must be able to resolve disputes whether between citizen and citizen or between citizen and State, not only fairly but also economically and expeditiously. Justice which is not affordable or delayed will amount to a denial of justice.

For the court system to be effective in minimising costs and delay, the importance of the following matters must be recognised, as they are in many overseas jurisdictions. First, it has to be appreciated that court time is a public resource and as with all public resources it is limited. The courts have a responsibility to the community to ensure that court time is fairly and efficiently allocated and used. And the effective use of court time will result in shorter hearings and the saving of costs for the parties. The courts have in recent years adapted their procedures to ensure that court time is well used; for example, the courts' requirements for the submission of written materials and arguments prior to the hearing and the handing down as opposed to the delivery of judgments. It must therefore be appreciated that to ensure that court time is well used, the judges have to do considerable preparatory work before the actual hearing. Court sitting time is therefore only a fraction of their working time.

Secondly, court procedures must be appropriate to minimise costs and delay. They should be readily understandable and applied. The scope for tactical abuse must be minimised. The parties should know each other's case as soon as practicable. This would encourage them to consider the early resolution of their disputes through compromise.

Thirdly, with a sound procedural framework, there must be effective case management by the courts. It should be the courts and not the parties which supervise and ultimately control the amount of time spent on various stages of the proceedings. A proactive approach to case management has to be adopted. This is essentially a matter of judicial culture and attitude and is of vital importance.

### Costs of litigation

As is the case with many overseas jurisdictions, the cost of litigation is a concern. It is a serious concern since the affordability of legal representation directly affects the citizen's constitutional right of access to the courts for the resolution of disputes. There have been interesting developments recently in some overseas jurisdictions in an attempt to tackle the problem. And they provide us with food for thought.

### Reform of civil rules and procedures

Having regard to this concern and recent developments overseas, I believe that it is now an appropriate time for us to conduct a review of the civil rules and procedures of the High Court and to consider changes with a view to ensuring and improving access to justice at reasonable cost and speed. I shall be appointing a Working Party under the Chairmanship of Mr Justice Patrick Chan, the Chief Judge of the High Court, for this purpose. Apart from judges, I shall appoint a barrister and a solicitor in consultation with the Chairman of the Bar Council and the President of the Law Society and members of the Department of Justice and the Legal Aid Department in consultation with their Heads. I shall also appoint a lay person in consultation with the Chairman of the Consumer Council. It will report as soon as practicable. But I appreciate that it will take some time.

The Working Party will have to examine developments in overseas jurisdictions and consider what is appropriate in our circumstances. Its work would cover all aspects of High Court rules and procedure. I would like to mention a few which may be considered. First, many judges hold the view that there are far too many unmeritorious interlocutory applications. This problem would have to be tackled.

Secondly, the public are ultimately the users of the courts. As far as the consumer is concerned, it makes sense that legal costs should be proportionate to the amount at stake and that the consumer should have some idea beforehand of the amount of legal costs. The charging of legal fees by reference to the time spent has been criticized in other jurisdictions as unfair, uncertain and inevitably leading to higher costs. There is no easy solution. One possible solution that has to be explored is whether it is practicable to have fixed or maximum costs by reference to the amount of the claim or certain types of applications. Another possibility is to have a presumptive limit on costs by reference to these matters so that costs beyond the limit would have to be justified.

Thirdly, the question of what use can be made of fast developing technology would have to be considered. This would include for example the electronic filing of documents and the use of video links at hearing.

Any reform of civil rules and procedure must of course ensure fairness. But I believe that reasonable cost and speed can be achieved without any compromise of this fundamental requirement. To be effective, initiatives to reform taken by the Judiciary requires the support of the profession and the Department of Justice and the Legal Aid Department. I am sure that I shall have the contribution and support of all parties concerned to this important exercise. I am confident that they will regard, as I do, the public interest as the overriding consideration. Indeed, the Chairman of the Bar, for example, has put forward useful suggestions which the Working Party will be considering.

#### District Court jurisdiction

Turning to the District Court, the District Court (Amendment) Bill proposing the increase in its civil jurisdiction from \$120,000 to \$600,000 is now before the legislature. It is proposed that this will be further increased to \$1 million in about two years subject to a review. The present jurisdiction was set in 1988 and this increase is long overdue. It will

result in a significant number of cases going to the District Court instead of the High Court. This should provide some relief in the High Court where my colleagues had to cope with an increase of about 50% in the caseload as a result of the economic downturn with very limited additional resources. The Judiciary has taken appropriate steps to get the District Court ready. I urge that the legislation be enacted as soon as possible. As legal costs for cases in the District Court should be lower than those in the High Court, and as there are some procedural differences between them, access to justice should be improved as a result of the increase.

## Two aspects of legal representation

An independent legal profession including in particular, an independent Bar is of the greatest importance to the functioning of an independent Judiciary. Today, I would refer to two aspects concerning those who appear before the courts. First, overseas counsel admitted by the High Court to appear in individual cases. Secondly, lay court prosecutors in the magistracies.

### Overseas counsel

Following the Chief Judge's judgment in October 1998 revising the guidelines and principles having regard to what is in the public interest, the number of admissions of overseas counsel for individual cases has increased. Taking the year 1999, there were 33 applications resulting in 32 admissions with the Bar consenting to 30 of them. A substantial number, 19, were for appearance in the appellate courts, with 13 in the Court of Appeal and 6 in the Court of Final Appeal.

In April 1999, the Chairman of the Bar chose the occasion of the ceremony for the admission of senior counsel to voice his concern that the admission of overseas counsel would have an adverse effect on the development of the Bar. I understand that concern. The development of a strong and independent Bar is indeed a very important facet of the public interest. But the admission of overseas counsel in appropriate cases is subject invariably to the requirement that Hong Kong counsel is instructed. Our Bar will benefit enormously from cross-fertilisation with them and I regard their admission in suitable cases as contributing to the development of our Bar.

The 32 admissions in 1999 should be contrasted with 60 admissions a decade ago in 1989. With the rapid expansion of the size of and the work for the Bar in the last decade, the position today is that the work done by overseas counsel is only a very minor part of the Bar's work, even less than that a decade ago relatively speaking. Further, these admissions have not deterred good quality juniors from applying for appointment as senior counsel, as is evident from the number and quality of the applications this year. So the concern whilst understandable should be kept in proper proportion and should not be exaggerated.

### Lay prosecutors

The magistracies handle a huge number of cases, over 400,000 a year. It is in these courts that the public have the greatest opportunity to see the law at work. The bulk of the prosecution is conducted by lay court prosecutors trained by the Department of Justice. This started over 20 years ago when Hong Kong was short of professional lawyers.

With the rapid growth in the legal profession since then, I believe that it is time for the Administration to consider whether the public interest and the administration of justice would be even better served if these prosecutions were now to be undertaken by lawyers in the private sector. Suitable transitional arrangements must be considered so that the interests of the present lay prosecutors are safeguarded. It must be remembered that apart from their professional qualification, lawyers in the private sector would also have the benefit of experience in defence work. Cost is relevant, but it should not be the prime consideration. And it should be borne in mind that pricing in the private sector can be competitive.

In making this suggestion, I must not be taken to be in any way critical of the lay court prosecutors. Indeed I acknowledge the useful work they do. The suggestion seeks to strive for further improvement in the public interest. Many lay court prosecutors have gone on to become lawyers and some have become magistrates. In this connection, I note that in 1981 a lay magistrate grade was created in the Judiciary to deal with the large volume of relatively minor and routine magisterial work. But since March 1999, we have decided that only legally qualified persons would be appointed special magistrates.

#### Legal education

I welcome the review of legal education which has started and wish to emphasise its importance. I have every confidence that the review will be wide-ranging and will explore all possibilities. We need to examine carefully the appropriate number of lawyers we should be training and the improvements that should be made to the manner in which they are trained in order to meet modern needs.

#### Conclusion

Ladies and gentlemen, as we progress in the new millennium, the Judiciary faces exciting challenges in the administration of justice. The Judiciary is an institution that belongs to and serves the community and the community has rising and greater expectations of their Judiciary. To ensure that the rule of law continues to thrive, we must rise to the challenges and meet those expectations.

It remains for me to wish you on behalf of all my colleagues in the Judiciary good health and good fortune in the new year.

End/Monday, January 17, 2000

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