

## **The Chief Justice's Address at the Opening of the Legal Year**

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Secretary for Justice, Madam Chairman, Mr President, Ladies and Gentlemen,

On behalf of all my colleagues in the Judiciary, it is an honour for me to warmly welcome you to the 1998 Opening of the Legal Year. I thank you for your support in attending.

### **The occasion**

This occasion hosted by the Judiciary is an important event. It focuses public attention on the administration of justice and the rule of law. It provides an opportunity for us to speak about the challenges which we face. Above all, it enables the Judiciary together with government lawyers, the Bar and the Law Society to demonstrate to the public that they are united and can work together in achieving their common goal of serving the community and maintaining the rule of law.

For the first time on such an occasion, you see before you the entire body of judges and judicial officers. (I shall refer to them all as judges.) In particular, all your magistrates and tribunal judicial officers are here. They carry a heavy workload and have the greatest opportunity of inter-facing with the public. Each of us, whatever our position in the Judiciary, has an important contribution to make.

### **Historic year**

This year is of course a historic year, witnessing our re-unification with the Motherland and the establishment of the Hong Kong Special Administrative Region of the People's Republic of China exercising a high degree of autonomy under the concept of one country two systems.

### **Smooth transition**

The transition to the new order has been a smooth one for the Judiciary. All judges remain in office in accordance with the Basic Law. The administration of justice by the courts has continued as before. The common law continues to thrive. The Court of Final

Appeal, our own final appellate court, is established and functioning with a panel of judges of the highest international reputation. Pessimistic predictions on our transition have proved unfounded.

### **Expectation of the Judiciary**

An independent Judiciary upholding the rule of law is a cornerstone of our society. The Judiciary is an institution of government, the institution that exercises independent judicial power. As such, it belongs to and serves the community by maintaining the rule of law. In this new era, what does and what should the community expect of its Judiciary?

The community expect and have a right to expect that their Judiciary has the supreme qualities of independence with integrity and professional competence. Let me assure you that these are and will remain our hallmarks. The law must be and will be impartially and competently administered.

### **Independence with integrity**

Independence with integrity must be the heart and soul of your Judiciary. The Judiciary must be and must be seen to be impartial. Everyone is equal before the law. Judges resolve disputes as between citizens and as between citizen and state in an impartial manner without fear or favour.

The principle of judicial independence is put in these terms in the Statement of the Principles of the Independence of the Judiciary subscribed by the Chief Justices of Asia and the Pacific in Beijing in 1995 and re-affirmed in Manila in 1997.

"It is the duty of the Judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the Judiciary."

Judicial independence is a core element in the cardinal principle of the separation of powers. This involves checks and balances between the Executive, the Legislature and the Judiciary. It is not the function of the Judiciary to meddle in matters which are properly within the responsibility of the other branches and vice versa. But the Judiciary

has a vital constitutional role to ensure that the acts of the Executive and the Legislature comply fully with the Basic Law and the law, and that our fundamental rights and freedoms, which represent enduring values of our society, are fully protected. As has been rightly observed, there is no place in a free society for a supine Judiciary.

In discharging its duties, the Judiciary has to pronounce judgments in cases which inevitably by reason of their subject matter are controversial. This is particularly so in the area of constitutional and public law. Judges are, as they must be, fearless in applying the law, irrespective of popular or media acclaim or criticism. Their judgments are, as they should be, subjected to public scrutiny. The right to criticise the judgments of the courts is a constitutional right which should be responsibly and vigorously exercised in a free society.

The merits or de-merits of any court decision should always be discussed in a rational manner. The use of political invective for political purposes, calling into question the judges' independence, has no place in such a discussion. Any politician who engages in such invective will be doing a great disservice in attempting to undermine public confidence in the rule of law administered by independent judges who are the ultimate bastion of liberty and freedom. Fortunately, the use of such political invective is not common.

### **Professional competence**

Apart from the supreme quality of independence, the community expect and have a right to expect high standards of professional competence. Let me assure you that we are committed to maintaining high standards and to improving them. I shall concentrate on three essential aspects.

First, judges must know the law and appreciate the law's purpose and spirit. They should understand the connection between legal doctrine and its practical effect. They should assist in developing the law to meet the fast changing needs of our society.

Secondly, judges should have the balanced temperament to operate the judicial process. Parties are entitled to a hearing which is fair and which is seen to be fair. Judges must function courteously but firmly, deeply conscious that they are servants of the people and that courtesy is always owed by those in authority to those who are affected by it. Every time they hear a case, judges are and should be aware that they and the Judiciary are themselves on trial in the court of professional and public opinion. If public confidence in

the courts is to be maintained, it is of vital importance that win or lose, litigants and their lawyers feel that they have had their day in court and they go away from the door of the court with an enhanced respect for the judicial process.

Thirdly, judges in any modern judiciary must function with efficiency. This involves not only mastering new technologies but also applying effective case management in dealing with business before the courts. Case management is not a fashion but an indispensable technique for the administration of justice. Efficiency is consistent with maintaining quality and with courtesy. Without effective case management, justice will be delayed and hence denied. Without it, the cost of justice may be excessive and this would impede the citizen's constitutional right of access to the courts and would be justice denied.

### **Judicial education and training**

No modern institution can retain its vigour without good in service education and training. We will place great emphasis on this in our endeavour to maintain high standards and to improve them. Continuing education and training for judges must be strengthened and sufficient resources must be obtained and devoted to this important task. We have already held our first three day residential induction course for new magistrates and we are developing other initiatives.

### **Use of Chinese**

Administering the law in a language that the parties can understand is important. The use of Chinese in court proceedings is a complex subject and no other jurisdiction has the experience in the use of Chinese in a common law setting to help us. We have in fact built up substantial experience in the lower courts. We need to progress steadily but cautiously. The tradition of the common law has its roots in English and its literature is mostly in English. We have to ensure that the common law in its full vigour is maintained and developed, and that our jurisprudence is accessible to and respected in the international common law family.

The Secretary for Justice will soon be forming the Committee on Bilingual Legal System to advise on this subject. The Judiciary will play its full part on that Committee and will do its utmost to contribute to the development of bilingualism in law.

Since I assumed office, all my colleagues have generously given me their unstinting support for which I am deeply grateful. In conclusion, my colleagues and I are fully conscious of the high expectations of us by the community to maintain the rule of law and to safeguard their rights and freedoms. Let me assure you that all members of your Judiciary are deeply committed and are fully dedicated to doing our very best to meet those expectations.

Thank you.

12 January 1998

The Chief Justice, Mr Andrew Li, inspects the guard of honour mounted by the Hong Kong Police Force at Edinburgh Place in Central during the Ceremonial Opening of Legal Year 1998.



Opening of the Legal Year on 12 January 1998 The Chief Justice, Mr Andrew Li, addresses the Ceremonial Opening of Legal Year 1998 in the Concert Hall of City Hall.

