

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

Secretary for Justice, Madam Chairman, Mr President,

Distinguished Guests, Ladies and Gentlemen,

On behalf of all my colleagues in the Judiciary, I warmly welcome you to the 1999 Opening of the Legal Year. This is an important community event which focuses on the administration of justice and the rule of law. Your support in attending this solemn occasion is greatly appreciated.

Last year, I spoke in both official languages. Our bi-lingual guests found it tedious to have to listen to the same speech twice. Our mono-lingual guests also found it boring to have to sit through that part of it which they do not understand. I suspect there may have been some who found the speech given in either language dull in any event but were too polite to express that view. This year, I shall speak in English and the Chinese version will be printed simultaneously on the screen before you. I hope this will be an improvement.

In the new order, we have for the first time in our history, our own final appellate court. I shall take this opportunity to account to the community for its work. I shall then speak about the legal profession and legal education which are both crucial for the continued maintenance of the rule of law.

The Court of Final Appeal

The Court of Final Appeal was established to replace the Privy Council as our own final appellate court. Accessibility to the Court is identical to that for the Privy Council with similar criteria for lodging appeals. For final judgments in civil cases involving more than HK\$1 million, there is an appeal as of right. Apart from this, an appeal can only go forward with leave. This is a matter of discretion and ensures that only cases, which involve important points of law or principle or in criminal cases where grave and substantial injustice has been shown, end up in the court.

By 1 July 1997, the Privy Council had cleared all the cases before it. There were no transitional cases which came to us. We started off with a clean slate. Under our rules

which call for written cases to be lodged, it would take a case a number of months to proceed to a full hearing.

The caseload has gradually and steadily increased. We heard the first application for leave to appeal in September 1997 and the first appeal in December 1997. By the end of December 1998, we had heard 57 applications for leave to appeal and 20 appeals. By the end of March 1999, we would have heard another 11 appeals, making a total of 31 appeals. This compares with 28 applications for leave to appeal and 18 appeals before the Privy Council in 1996, the last complete year of its work. As with the Privy Council, there tends to be many more non-criminal cases than criminal cases reflecting the different criteria for appeal.

It is evident from these figures that the presence of the Court in Hong Kong has increased its accessibility to the public. We have striven to make our rules more user friendly. In about 50 % of the leave applications, one of the parties appeared in person, usually a party who could not afford a lawyer or obtain legal aid. As with applications which are presented by counsel, his application is carefully considered. I would like to think that whatever the outcome, his encounter enhances his respect for the courts and the legal system.

The reputation of the Court can only be established domestically and internationally by the quality of its judgments. I and my colleagues on the Court are determined to do our very best. The time taken to hear an appeal is the tip of the iceberg of the considerable time spent by the judges before and after the hearing on the case. Particularly time for preparation of the judgment since statements in them may have a far reaching impact.

It is a collegiate court of five members with of course the right to give separate judgments, whether concurring or dissenting. One member of the Court is a non-permanent judge. I believe that Hong Kong is fortunate to have as non-permanent judges on the overseas panel distinguished jurists of the highest standing from Australia, New Zealand and the United Kingdom, in addition to the non-permanent Hong Kong judges. One of them, Sir Anthony Mason, the eminent former Chief Justice of Australia, is with us today. The law provides that the non-permanent judge is selected by the Chief Justice and invited by the Court. I have so far drawn from the overseas panel whose members bring a breadth of experience and perspective from other jurisdictions. I intend to continue to do so.

In our adversarial system, the courts rely to a great extent on the arguments advanced. The better their quality, the greater their assistance. The legal profession, particularly the Bar including such overseas counsel as may be admitted in the public interest to appear in

particular cases, has a most important contribution to make to the Court's work. Through well researched and well articulated written arguments as well as oral arguments.

As with other final appellate courts, oral arguments are tested with questions from the Bench. Some advocates enjoy these challenging interventions more than others. It provides the able advocate with the opportunity to put his case clearly in an area which may be troubling the Court. I regard the dialectic between Bench and Bar as important to the functioning of the Court. Our overseas colleagues tell us that it occurs to the same degree in the High Court of Australia and the House of Lords.

It is my honour to preside over the Court of Final Appeal in the courtroom, once the chapel of the French Mission, in the wonderful building built in the 1840's which resounds with our history with its many turns in the wheels of fortune. I venture to suggest that your final appellate court has started off well. I and my colleagues have every determination and confidence that we will make steady progress towards our objective of having a final court which will rank amongst the best in the common law world.

The legal profession

Last year, I dealt with the community's expectations of the Judiciary. This year, I would like to consider the community's expectations of the legal profession.

I should preface my remarks by making this declaration: I spent my working life until recently as a member of the legal profession. You will therefore understand that the welfare and future of the profession is not only important for the public interest but is dear to my heart with deep affection grown out of long and happy association.

The legal profession in both its branches is an independent profession. It is self-regulating subject to the court's supervision in the public interest. The court is the ultimate authority for admission as well as for discipline. And statutory rules governing the profession must be approved by the Chief Justice. The importance of the legal profession for the rule of law and our social and economic development does not need any elaboration.

What should the community expect of the legal profession ? The public expects lawyers to be professionals of integrity and competence who can represent them at affordable cost. At the same time, the public should appreciate that the lawyer is not the paid piper who plays any tune called by the client. Apart from his duties to his client, the lawyer owes

important duties both to the court and to the profession. These duties are imposed for the proper administration of justice and are enforceable by appropriate legal and disciplinary sanctions. They include the duty not to mislead the court, and the duty to avoid unnecessary expense and waste of the Court's time.

If the legal profession is to maintain its vigor in a fast changing world, it has to invest heavily in technology and training. I welcome the significant progress on continuing legal education which has been made by both governing councils. The Judiciary will do what it properly can to help if called upon by the profession.

I firmly believe that leaders and senior members of the profession owe a professional duty to assist the younger generation. They should contribute their time, share their experiences and assume a greater share of the burden for the welfare of the profession.

The legal profession would only continue to command the respect of the community if it, led by the governing councils, rises above and is seen to be rising above sectional interests to consider what is in the public interest. What may perhaps be inevitable institutional pressures to protect sectional interests, however presented, must be overcome. Rising costs of litigation which affect the citizen's constitutional right of access to the courts, is a worldwide concern. I trust I can count on the profession's contribution and support in exploring ways to tackle this issue without compromising the quality of the administration of justice. We must always remember that the ultimate users of the courts are the public.

As in other jurisdictions, the state is now a major payer of legal fees to the private profession. In the financial year 1997-98, the fees paid to private practitioners in both branches by the Department of Justice, the Legal Aid Department and the Duty Lawyer Service totaled \$425.4 million. I do not have the breakdown between solicitor and barrister fees of the amount spent by the Department of Justice. Assuming an equal division of the Department of Justice's expenditure, the total of \$425.4 million is made up of \$204.1 million for barrister fees and \$221.3 million for solicitor fees. This is a substantial amount of public money spent on legal fees.

Those who are responsible for instructing lawyers and paying these fees owe, in my view, a number of duties. First, they owe a duty to ensure proper representation for the person whose liberty or property is at stake, or proper representation for the government in the case of the Department of Justice. Secondly, they owe a duty to ensure that public money is well spent. Thirdly, they owe a duty to use the resources in a way which is conducive to the proper development of the profession, particularly the grooming of able young practitioners, since that is an important facet of the public interest.

It is incumbent upon the departments concerned and the Duty Lawyer Service to demonstrate to the public that the performance of lawyers instructed are assessed and fairly and properly assessed. It is in the public interest that every young practitioner be given a fair opportunity to prove his worth. But once this has been done, those who have demonstrated their ability and industry should be given more and heavier responsibilities. Those who have been assessed to be below standard should not be instructed. If the work is distributed equally regardless of merit, this would not be an acceptable way of discharging those duties. Nor would it be conducive to the improvement of professional standards. The community would be subsidising the incompetent and we would have in reality an inefficient enterprise funded by the state. That cannot be in the public interest. The legal profession must remain a truly meritocratic profession.

Legal education

I turn to legal education. It is an important community investment with public funds and we must ensure that lawyers of good quality are produced to serve the community. There is widespread concern of the quality of new entrants to the profession. I share that concern. It must be emphasised that the focus is on quality.

We must therefore consider ways of improving the quality of new entrants and examine the legal education provided. There has been considerable discussion on the subject but not much progress has been made towards finding a solution. I would like to take this opportunity to put a specific proposal for change in the public forum for consideration. I hope this will hasten a decision on a solution.

The first degree, the Bachelor of Laws (LIB), is of course, very important. It is there that the student obtains a sound grounding of legal principles and concepts as well as the values that underlie our legal system. It is an essential degree for those who proceed to become professional lawyers. But it is also a good degree for those who proceed to other careers, including the public service and the financial services field. I would like to emphasise the fundamental importance of the education provided on the LIB course and every effort must be made to enhance its quality.

Apart from the LIB course, the main immediate factors that impact on the quality of the new entrant include first, the quality of the intake into the professional qualification course, the Postgraduate Certificate of Laws (PCL) and secondly, the education provided on that course.

Hitherto, entry into the PCLL course has been relatively easy. For example, the University of Hong Kong, which has more students than the City University, admits all its Bachelor of Laws (LIB) graduates achieving a 2nd class 2nd division degree or above. Practically, this includes nearly all LIB graduates since there are usually only a few students who fail to achieve that mark. I consider that the time has come for the tertiary institutions to examine seriously admitting fewer students into the PCLL course by raising the entry qualification. Notice must of course be given of any change and the expectations of the present students must be honoured.

At the same time, I believe that there is a good argument for improving the quality of the professional course by enhancing its curriculum and lengthening it. This would enable more skills to be taught to prepare the students to enter the profession. Consideration can be given to appropriate electives for the two different branches of the profession. The period by which the course should be lengthened would depend on the contents of the enhanced curriculum. The summer vacation after the first year could be used to fit in a few months of pupillage or traineeship which would bring to live certain topics which would subsequently be taught.

The lengthening of the professional course would have resource implications. If the community considers that legal education already takes up a sufficient proportion of the limited cake, the solution would be to maintain the amount spent on legal education but reduce the number of students so that the cost per student would be increased. This would be worthwhile in order to achieve a better quality entrant to the profession. Consideration could also be given to increasing the fees for this course.

The proposed changes outlined above, raising the entry qualification into the professional course and improving and lengthening that course, would apply equivalently to professional courses run only on fees without public subsidy at the School of Professional and Continuing Education of the University of Hong Kong.

The freshmen class this year 1998-9 in our law schools would enter the profession in 2003 for barristers and 2004 for solicitors. They would achieve the same experience as I at present have by about 2030. By that time, most of us on the platform today would have faded from the scene and I suspect probably forgotten. But we must now take action to ensure that in the long term, the rule of law and the administration of justice will retain its vitality. It is a duty which we owe to ourselves and to succeeding generations.

Conclusion

Ladies and gentlemen, this is the last opening of the legal year in the 20th century. The new millennium beckons us. As we say farewell to this century and welcome in the new, the Judiciary re-affirms its abiding commitment to its mission to maintain an independent and competent judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual and commands domestic and international confidence.

Thank you for listening so patiently. It remains for me to wish you on behalf of all my colleagues in the Judiciary happy new year, good health and good fortune.

11 January 1999

The Chief Justice, the Hon Mr. Justice Andrew Li, addressing at the Ceremonial Opening of Legal Year 1999 in Concert Hall, City Hall today (Monday).



The Chief Justice, the Hon Mr Justice Andrew Li, inspecting the Guard of Honour mounted by the Police Training School at the Edinburgh Place during the Ceremonial Opening of Legal Year 1999 today (Monday).

