

The following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, at the Ceremonial Opening of the Legal Year 2014 today (January 13):

Secretary for Justice, Mr Chairman, Mr President,
distinguished guests, ladies and gentlemen,

On behalf of the Hong Kong Judiciary, I extend a warm welcome to all of you to this year's Opening of the Legal Year.

The work undertaken by our courts mirrors the society in which we live. The variety of cases dealt with by the courts reflects the very different aspects of life in the community: the economy, politics, social problems, international and commercial matters. The constitutional role of judges and the courts is to apply the law to the many different situations arising from these facets of the community. Our system of law is one that not only enables disputes to be resolved, but it also helps provide guidance and a significant degree of certainty to enable members of the community to function in their daily lives and occupations.

Last year, I focused on the essence - or heart - of Hong Kong's system of law. I called it the integrity of the law. It is worth repeating the salient features of this integrity: a truly independent judiciary, judges who look no further than the proper application of the law both in letter and in spirit, and the importance of ensuring transparency in all that the courts do in order to demonstrate the integrity of the law. This latter point is of considerable importance: the confidence that there exists the rule of law in a community does not come about merely by what is said by people (including the Chief Justice) or what is said by institutions (including the Government). Rather, the existence of the rule of law ought to be assessed by a critical examination of objective features that are relevant to be considered.

Principal among these are the reasoned judgments of the courts - by being freely available to the public, every step of the legal reasoning of the court in arriving at a decision can be critically analysed in order to make sure that the court has done what it is constitutionally required to do, namely, to act according to the law. Other objective features of course include the ability to follow almost all proceedings which take place in our courts. Our courts (from the magistrates' courts where by far the public has the most

exposure to the legal process, to the Court of Final Appeal) are open to the public. And in the Court of Final Appeal, we have introduced summaries of cases and judgments, whereby at the start of any substantive appeal a summary is provided, both in English and in Chinese, of the issues in the appeal, and, when judgment is given, a summary is provided of the main points decided in the appeal. These summaries will hopefully help the public better understand the work done in the Court of Final Appeal.

In the past year, the courts have had to adjudicate on difficult cases, many of them in public law matters. It is perhaps in this type of case where the integrity of the law can most easily be appreciated. Public law cases - many of them in judicial review proceedings - involve not only topics of immense public importance and interest, but may sometimes also involve testing the demarcation lines between the legislature, the executive and the judiciary. For me, the constitutional line drawn for the Judiciary is a clear one: courts and judges only deal with the legal issues arising in the disputes that come before them and we determine only these legal issues. Although disputes between parties may have political, economic or social consequences, such as those cases involving matters of government policy, at all times the courts look only to the legal issues that divide the parties. As I have said on numerous occasions, it is not part of the courts' role to decide on any aspect other than the legal issues which arise. The Basic Law sets out clearly the principle of the separation of powers between the legislature, the executive and the judiciary, and in quite specific terms, the different roles of the three institutions. So far as the Judiciary is concerned, the ambit of its constitutional role is the exercise of judicial power, that is, the adjudication of disputes that come before the courts in accordance with the law.

The independence of Hong Kong's judges, the respect for the integrity of the law and the constitutional duty on the Judiciary are key aspects of Hong Kong's legal system, but there is another facet that must be considered in any overall evaluation of the system. This is the administration of justice, that is, the operation of the law in practice. The administration of justice is the practical ability in a Judiciary to ensure that legal disputes coming before the courts are justly and properly resolved; it is in short the practical implementation of the rule of law. It is self-evident that the rule of law carries with it the responsibility not just to be faithful to the law and to respect its integrity, but must also involve the ability to dispense justice in reality and to ensure effective access to justice.

Central to the administration of justice is the quality of our judges at all levels. In days long past, the workload of our courts was significantly less than at present and the complexity of cases before the courts nowhere near as sophisticated or difficult as is now the norm in modern litigation. Now, it has become an accepted feature of the Judiciary and also an imperative that her judges must be of the highest possible standard. The appointments made in the Judiciary since 1997 amply reflect the high quality of our Judiciary. And it must remain our policy that only persons of the highest calibre are appointed as judges. Judges are not appointed by the Chief Justice or even by a group of judges. Candidates are considered for appointment by a statutory body known as the Judicial Officers Recommendation Commission set up under the Basic Law: this body's

function is to make recommendations to the Chief Executive regarding the appointment of judges at all levels, including the Chief Justice. It is chaired by the Chief Justice and consists of eight other members, including three members not involved with the practice of law; in other words, lay members. Members of the Commission must take an oath of office as solemn as the judicial oath taken by judges: they declare that they will "freely and without fear or favour, affection or ill-will" give their advice to the Chief Executive in discharging their functions.

It has for many years been the policy of the Commission to have regard to four criteria when considering judicial appointments: knowledge of the law, judicial temperament, propriety of conduct and case management. Underlying the approach of the Commission in terms of making recommendations is an acceptance that only candidates of the highest quality should be recommended for appointment. This approach has worked well in the past and remains the right, indeed the only, approach. The recommendations made by the Commission are then provided to the Chief Executive, who has the final responsibility to make the actual appointments. I have not known or heard of any occasion in which the Chief Executive has not accepted the recommendations made by the Commission, nor in any way sought to influence the Commission. In the case of the appointment of the Chief Justice, the judges of the Court of Final Appeal and the Chief Judge of the High Court, the Chief Executive must also obtain the endorsement of the Legislative Council. The process of the appointment of judges in Hong Kong is designed to ensure that only persons of the requisite quality, standard and integrity are appointed.

The quality of judges and the standard expected of them are not static in time. A modern Judiciary is expected to maintain the highest standards, if not improve on them. Judges are expected individually to embrace this culture in the discharge of their responsibilities. Collectively, the Judiciary has also made much progress. We are in the process of making important changes to our system of judicial education. The Hong Kong Judicial Institute has been set up to take over from the Judicial Studies Board the judicial education responsibilities of the Judiciary. The Institute will provide a more formalised, hands-on and practical system of judicial education and continuing legal education for our judges. Here, I wish to acknowledge the role played (and continued to be played) by Mr Justice Stock, VP, in this initiative. We are grateful to him.

One of the responsibilities of the Chief Justice in the administration of justice is to assess the practical needs of the Judiciary for the future - short term, mid-term and long term. Our courts remain busy and our judges will continue to deal with important legal issues and challenges having a significant impact on the community. I have been for some time now evaluating the practical needs of the Judiciary for the future. This includes examining critically the manpower situation, whether there is a need to increase the number of judges in Hong Kong. By any standards, our Judiciary is a relatively small one given the volume and complexity of cases with which we deal; the establishment figure for our Judges and Judicial Officers is 193. Any consideration of an increase in the number of judges of course also involves an examination of associated aspects. For example, if there were to be an increase in numbers for the Judiciary, there must be

adequate court rooms and space to cope with any expansion. There are naturally other logistical aspects which need to be considered as well.

In July last year, I corresponded with the Chief Executive in relation to the question of more space for the Judiciary and the need for adequate resources. Underlying this correspondence was the fact that until thought had been given to these matters, not only would any plans for expansion be limited, but even the existing demands on the Judiciary would be under pressure. You will be aware that the Judiciary is in the process of setting up a Competition Tribunal as part of the Judiciary. Apart from this, there are considerable demands on space for many levels of court - the High Court, the District Court, the Family Court and the Lands Tribunal among others.

I am pleased to report that the Chief Executive and the executive authorities have been extremely receptive to enter into a meaningful dialogue in relation to these topics. It is recognised by them that an efficient and independent Judiciary is cardinal to the rule of law, and that the executive authorities ought to render all necessary support to promote the effective, efficient and fair administration of justice in Hong Kong. The importance of rule of law in Hong Kong and the administration of justice is, I believe, recognised by the community. Not only are the executive authorities aware of the importance, but in the meaningful exchanges the Judiciary has had with the Legislative Council, particularly the Administration of Justice and Legal Services Panel whose members I met recently, this also appears to be the view of that body.

I welcome this dialogue and will keep the community updated on any significant progress. It reflects the importance of the law in Hong Kong. It reflects the recognition that the administration of justice is important in Hong Kong. The initiative of the Judiciary in improving the civil justice system (the Civil Justice Reform which was put in place in 2009), the promotion of mediation, the much needed reform of family procedural law (as to which the Judiciary will be consulting all relevant stakeholders in the near future) and other aspects all require resources in order to be fully effective. It is in the community's best interests to have in place an effective administration of justice; this paves the way for the rule of law to provide the stability and confidence for the community's present and future well-being.

Lastly, I would like to pay tribute to Mr Justice Patrick Chan, who retired from the Court of Final Appeal two months ago. He had served the Judiciary for 26 years and in the course of this career has made a significant contribution to the law and to the courts. He was our first Chief Judge of the High Court as well. In his speech at the Farewell Sitting held in his honour, he said this:

"Like all my colleagues, I am merely doing what every person holding judicial office

should do. We are under a constitutional duty to administer justice fairly and impartially, to uphold the rule of law and to maintain the independence of the Judiciary. We are conscious that every decision we make is not only important to the parties before the court but also to the public's perception of the administration of justice. We have to ensure that every person before us is given a fair opportunity to put forward his or her case and we have to be patient to allow him or her to do so within reasonable limits. We constantly remind ourselves that what we do and how we behave in and out of court have a significant impact on the public confidence in the rule of law and the independence of the Judiciary. All these years, like all of my colleagues, I have only been trying to do my best to be faithful to my judicial oath."

These words encapsulate precisely the role of a judge. It is what every judge on this stage strives to achieve and this is what underpins the strength of any legal system.

Ladies and gentlemen, on behalf of the Judiciary, I wish you and your families good health and a fulfilling New Year. I also wish you a happy Year of the Horse. Thank you.

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The Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, inspects the guard of honour mounted by the Hong Kong Police Force at Edinburgh Place during the Ceremonial Opening of the Legal Year 2014 today (January 13).



The Chief Justice addresses more than 1,000 attendees, including judges, judicial officers and members of the legal profession, at the Concert Hall of Hong Kong City Hall.