

## **Chief Justice's speech at Ceremonial Opening of the Legal Year 2005**

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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 2005 today (February 17):

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 to this Opening of the Legal Year. This is an important community event which focuses on the rule of law and the administration of justice. Your support by your presence is greatly and sincerely appreciated.

### **The rule of law**

The rule of law is a cornerstone of our society. A Judiciary which is and which is perceived to be independent is of course fundamental to the rule of law and to the effective protection of individual rights and freedoms which are at the heart of our separate system.

The constitutional role of judges is to adjudicate disputes between citizens and between citizen and government fairly and impartially. Everyone is equal before the law. Citizen and government, the powerful and the weak, the rich and the poor are all equal before the courts.

In recent times, there has been an increasing number of cases before the courts which have important political, economic and social repercussions for society. This phenomenon is not peculiar to Hong Kong and is consistent with developments in many other jurisdictions. Many cases relate to the constitutional guarantees of rights and freedoms which the courts must be vigilant to safeguard.

It is fundamental for the community to understand that the judge does not function in the political arena where solutions to problems frequently involve a compromise of many factors and interests. The duty of a judge is always to administer justice according to law without fear or favour. A judge should not be deflected from this duty by considering what may be an expedient political solution. As has been well said, justice according to law and convenience are often not on speaking terms.

It is fundamental to the rule of law that due process must be observed in the adjudication of disputes. Citizens have a constitutional right of access to the courts and the courts must ensure that all parties have a fair opportunity of presenting their cases. Justice must be done and must be seen to be done. Where a party is abusing the process of the court, the court has effective powers both under rules of court and the inherent jurisdiction to

prevent abuse. But where a party has a reasonably arguable case, the court has a duty to entertain the claim fairly.

### **Guide to Judicial Conduct**

It is essential for the public to have confidence in the Judiciary and the administration of justice. In order to maintain and enhance public confidence, it is of fundamental importance that judges must at all times observe the highest standards of conduct. In my address last year, I informed the public that taking into account the experience of a number of overseas common law jurisdictions, the Judiciary was in the course of developing a Guide to Judicial Conduct appropriate for Hong Kong's circumstances. This work was completed in October 2004 and I must express my gratitude to the Working Party chaired by the Chief Judge of the High Court for bringing this project to completion.

The purpose of the Guide is to provide practical assistance to judges and I am confident it will serve that purpose. To increase transparency, it has been made available to the public.

To uphold the invaluable collective reputation of the Judiciary, each judge has the responsibility of maintaining the highest standards of conduct. I am confident that each judge understands the fundamental importance of this responsibility. And that to discharge it effectively, a high degree of alertness and caution is called for.

### **Budgetary constraints**

To enable the Judiciary to administer justice without undue delay, it must be provided with adequate resources. Having regard to the fiscal deficit, budgetary parameters have been set for the Judiciary, involving a serious reduction of just under 14% between 2002-3 and 2006-7. Leaving aside the separate question of judicial remuneration, my understanding is that the budgetary cuts faced by the Judiciary are broadly similar in extent to that applicable to the entire public sector.

In order to cope, the Judiciary has had to adopt a number of measures. The number of deputy judges will be reduced and some judicial posts will be left vacant. Capital projects have been shelved and two Magistracies have been and one more will be merged with others, resulting eventually in Magistracies in six locations instead of nine originally. At the same time, there has been considerable re-engineering in Judiciary Administration with the deletion of posts and the streamlining of tasks and procedures.

The Judiciary will do its best to minimise the impact of budgetary constraints. For example, Saturday sittings have been introduced in the Magistrates' Courts and the District Court. Where possible, resources will be redeployed from time to time to increase judicial manpower temporarily in areas facing particularly great pressure.

The result of budgetary constraints is that the workload for judges and their supporting staff has increased and will continue to increase. Both judges and their supporting staff have been working under considerable pressure and I wish to acknowledge and commend their dedicated efforts in doing their best to cope. As I have repeatedly stated, despite budgetary constraints, the quality of justice must not be compromised and must be maintained. This is a fundamental principle which must again be emphasised.

Having regard to this fundamental principle, it must be pointed out that there is a limit to what the Judiciary can properly do to cope with budgetary constraints. The Judiciary must cope with whatever may be the caseload from time to time. Even on the assumption of a stable caseload, it must be recognised by all concerned that the inevitable consequence of budgetary constraints over a period of time will be that the waiting times will be lengthened at all levels of court. It will take a longer time to obtain a hearing date. It is my duty to explain this plain fact frankly to the community. If there comes a point of time when the waiting times are considered to be unacceptable, the question of providing additional resources to the Judiciary will have to be raised and addressed by the Administration and the Legislature.

### **Civil Justice Reform**

In March 2004, the Working Party on Civil Justice Reform published its Final Report. Its members must be congratulated for the breadth and depth of its work. The report is an excellent one and I have accepted its recommendations which enjoy significant support from those who responded in the consultation exercise, including the legal profession.

This landmark report provides the blueprint for reforming our system in a way which is appropriate for Hong Kong's own circumstances. We need to improve the cost effectiveness of our system, making it less complex and reducing delays, without compromising the fundamental principle of doing justice between the parties.

We are now proceeding with implementation. As most of the recommendations are inter-related, they need to be implemented as one integrated package. I have asked the Chief Judge of the High Court to take overall charge and have established a Steering Committee under his chairmanship.

The challenges posed by and the work involved in implementation must not be underestimated. Primary and subsidiary legislation have to be drafted and piloted through the legislative process. The information technology system has to be revamped and enhanced. And extensive training of judges and supporting staff will be involved. I expect that it will take two to three years to deal with implementation. We will proceed as expeditiously as possible. But we will need to be realistic. Substantial changes are involved and it is important to get it right. Successful implementation requires the contribution of many parties outside the Judiciary including the legal profession, the Administration and the Legislature. And I look forward to their support in this most important exercise.

## **Mediation**

Mediation is becoming established in many common law jurisdictions as an effective alternative method of dispute resolution. One of the important recommendations of the Final Report is that, subject to further study by the Administration and consultation, the Legal Aid Department should have power in suitable cases to grant legal aid for mediation. After discussion with the Judiciary, the Administration has recently decided to run a pilot scheme for the provision of legal aid for mediation in the matrimonial field. This may have a significant impact, since provision of legal aid for matrimonial disputes is substantial and accounts for about one third of civil legal aid costs.

The Judiciary has already gained useful experience in mediation in the matrimonial area through its own pilot scheme between 2000 and 2003. That scheme was successful, with a high rate of settlement resulting from consensual mediation. The research team at the Hong Kong Polytechnic University which assessed the scheme concluded that mediation has a place in resolving family disputes and recommended that parties should be encouraged to use it as far as possible.

The Administration's present pilot scheme will operate for one year. It will be modelled on the Judiciary's pilot scheme and there is every reason to believe that it will achieve similar success. After that scheme has been operated and assessed, the provision of legal aid for mediation in all suitable cases at the discretion of the Director of Legal Aid should be considered. I believe that the provision of legal aid for mediation would achieve savings for the public purse. More importantly, successful mediation has a considerable social benefit in bringing about a more satisfactory resolution of disputes for the parties with less stress in the process.

## **Review of the Labour Tribunal**

To enable the Labour Tribunal to meet its challenges, a Working Party chaired by Madam Justice Chu was given the task of reviewing its operation and recommending improvements. Its report was published in June 2004 and I have accepted its recommendations. Most of them do not require any legislation and have already been implemented.

The Tribunal has for some years been operating in a commercial building. This is a highly unsatisfactory state of affairs. Apart from various operational deficiencies, such a location blurs its image and lowers its esteem as a court. A most important recommendation made by the Working Party was that the Tribunal should be relocated to the South Kowloon Magistrates' Courts Building. This would also result in substantial savings for the public purse as the costs for conversion and refurbishment would be offset by substantial saving in rental. I am glad that the Administration has decided to make resources available for this relocation. The process should be completed by the end of 2007.

## **Solicitors' rights of audience**

For a long time, calls have been made for an extension of solicitors' existing rights of audience with a view to enlarging the pool of advocates available to the public. The subject is a most important one. It is fundamental to consider what is in the public interest. A most important facet is that there must be the highest standards of advocacy before the courts. This is essential to the administration of justice in an adversarial system. Another most important facet of the public interest is that there should be a strong and independent Bar.

A few years ago, I considered it premature to explore this matter. However, I think that it is now appropriate to study the subject. I have appointed a Working Party chaired by Mr Justice Bokhary "to consider whether solicitors' existing rights of audience should be extended and if so, the mechanism for dealing with the grant of extended rights of audience to solicitors". Its membership comprises judges, barristers, solicitors, a law officer and a lay person. The Working Party has commenced work and will undertake appropriate consultation in due course.

## **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/Thursday, February 17, 2005

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