

The following is the full text of the speech delivered by the Chief Justice Mr Andrew Kwok-nang Li at the Ceremonial Opening of the Legal Year 2007 today (January 8):

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

We are at the threshold of a new year, a year in which we will be celebrating the 10th anniversary of the reunification. On behalf of all my colleagues in the Judiciary, I would like to welcome all of you warmly to this Opening of the Legal Year. I thank you sincerely for your support by your presence.

The Court of Final Appeal

The Court of Final Appeal has been in operation for just over nine and a half years. The experience since its establishment has shown that far greater use of our own final appellate court has been made compared to the use that was made of the Privy Council. During this period, the Court dealt with 260 appeals and 753 applications for leave to appeal, of which about 40% were disposed of on paper without a hearing. As far as appeals are concerned, about 70% were civil appeals, including appeals in judicial review cases, with the balance of 30% being criminal appeals.

The Court of five members, including a non-permanent judge usually an overseas judge, is functioning smoothly. We have travelled some distance and have gained useful experience. The Court is of course judged by the quality of its jurisprudence. That quality is best judged by others, including the legal profession and academic lawyers. However, I have every reason to believe that in its first decade, the Court has made good progress in establishing its stature.

With the benefit of experience, it has become clear that the present building for all its attractiveness is manifestly inadequate for the Court's purposes. The Judiciary has submitted a request to the Administration for the re-location of the Court to the present Legislative Council Building after the re-provision of the Council to the Tamar site. The re-location to that Building, which was previously the Supreme Court, would provide it with sufficient space and would be fitting. I trust that our request will be favourably considered.

Judicial review

The courts continue to face many challenging issues in judicial review cases. Questions relating to the proper interpretation of the Basic Law, the construction of statutes and common law principles arise in these cases. As far as the Basic Law is concerned, many articles of the Basic Law have been considered in court decisions since 1997. They include those concerning individual rights, such as the freedom of speech, the freedom of assembly and the right to privacy, as well as those relating to property and economic interests. Many judicial review cases concern the validity of restrictions on individual rights. In these cases, the essential question for the courts is where the proper balance between individual rights and community interests should be struck.

The number of judicial review applications stands at 132 in 2006, which is slightly less than the figure of around 150 in the previous two years. Although there may be some variation in the number of applications from year to year, it is important to recognise that judicial review is an established and vital feature of our legal system. This is not by any means unique to Hong Kong. On the contrary, the growth of judicial review in our jurisdiction in recent years is consistent with what has happened in many common law jurisdictions.

It is not an exaggeration to say that the phenomenon of judicial review has redefined the legal landscape. Further, the availability and use of judicial review has had a significant impact on the conduct of the business of government and has exercised a considerable influence on public debate on many issues. It would not be right for judicial review to be viewed negatively as a hindrance to government. On the contrary, it should be seen as providing an essential foundation for good governance under the rule of law.

Court decisions in many judicial review cases have important repercussions for various political, economic and social problems which confront our society. But I must reiterate that judicial review proceedings cannot provide a panacea for these problems. The constitutional role of the courts is only to determine the limits of legality by reference to the relevant constitutional and statutory provisions and the applicable common law principles. The courts are only concerned with what is legally valid, and what is not, in accordance with legal norms and principles.

Within the limits of legality, the practical solutions to the complex and difficult political, economic and social problems faced by society must be discussed and found through the proper operation of the political system. Citizens have to look to the political process to deliver appropriate workable solutions to these problems.

Civil Justice Reform

The Steering Committee to implement Civil Justice Reform chaired by the Chief Judge of the High Court has made good progress in its work. In April 2006, it published a Consultation Paper on the proposed legislative amendments, both primary and subsidiary. In October 2006, it met with representatives of the Bar and the Law Society respectively to discuss and address the points raised in their submissions. The draft legislation is being refined taking into account the points raised. I understand that the professional bodies are generally content with the draft legislation going ahead.

It is intended that the necessary draft legislation to implement the reform in the High Court and, also with appropriate modification, in the District Court will be introduced into the Legislative Council in the second quarter of 2007. I trust that the legislative process will be completed well before the end of the current term of the Legislative Council in 2008. After enactment, it is intended that the legislation will be brought into force at an appropriate date to allow adequate time for training and for the preparation of the necessary infrastructural support.

The road to much needed reform of our civil justice system began in February 2000 with the appointment of the Working Party. The journey has been a long one, and substantial resources have been devoted to the reform process. The stakeholders, including the profession, have been involved through membership of the Working Party. There has been consultation with all concerned at various stages and the Legislative Council's Panel on Administration of Justice and Legal Services has been kept informed. We are now in the final stage of this journey and we must all focus on successful implementation of the reform and look forward to reaping its benefits.

Mediation

Mediation has become established in many common law jurisdictions as an effective alternative method of dispute resolution. Successful mediation has considerable social benefits in bringing about a satisfactory resolution of the dispute for the parties with less stress in the process. Further, it has economic benefits in that substantial costs can be saved.

In Hong Kong, mediation has been developing and the pool of mediators has been growing and gaining in experience. In particular, it has been tried with successful results in the matrimonial area. Serious consideration should be given to extending legal aid to cover the costs of mediation, initially in matrimonial cases.

Having regard to the benefits of mediation and to developments in other common law jurisdictions, I have established a Working Party under the chairmanship of Mr Justice Lam to consider how consensual mediation of civil disputes in the Court of First Instance,

the District Court and the Lands Tribunal may be facilitated. Its members are drawn from judges, the Department of Justice, the Legal Aid Department, the legal profession and the mediation community.

In connection with the work of the Working Party, it is important to make the following points. First, it is concerned with the facilitation of consensual mediation, that is, where the parties by their own choice agree to engage in mediation. Secondly, where the parties agree to try mediation, it will be undertaken by a mediator outside the Judiciary selected by the parties. Thirdly, since mediation is still developing in Hong Kong, it is appropriate for the Working Party to adopt a gradual approach.

Criminal legal aid fees

Meetings convened by the Director of Administration with all stakeholders to conduct a much needed review of criminal legal aid fees began in March 2006. I understand that good progress has been made. I look forward to the finalisation of the review and the early implementation of its results.

Solicitors' rights of audience

The Working Party to consider the question of solicitors' rights of audience chaired by Mr Justice Bokhary received a substantial number of submissions in response to its Consultation Paper. It is in the course of deliberating on the recommendations to be made.

The Legal profession

The size of both branches of the legal profession has grown substantially in recent years. There are now about 1,000 practising barristers and about 5,700 practising solicitors. With the increase in numbers, the competition for work has intensified. Faced with commercial pressures, it is all the more important that the profession should exercise vigilance in discharging its duty to ensure that ethical standards are maintained and that disciplinary action is taken where appropriate.

Conclusion

Ladies and Gentlemen, we are fast approaching the 10th anniversary of reunification. We live in an era of rapid change. But in a fast changing world, the rule of law with an independent Judiciary is and will remain a cardinal value of our society which is immutable.

I and my colleagues are deeply conscious that the community has high expectations of the Judiciary to maintain the rule of law and to safeguard their rights and freedoms. I must take this opportunity of paying tribute to judges at all levels of courts as well as administrative and supporting staff for their conscientiousness and dedication. As in the past, all members of the Judiciary are deeply committed to doing our very best to meet community expectations.

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/Monday, January 8, 2007
Issued at HKT 18:01

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The Honourable Chief Justice, Mr Andrew Kwok-nang Li, inspects the Guard of Honour mounted by the Hong Kong Police Force at Edinburgh Place, during the Ceremonial Opening of the Legal Year 2007.



The Honourable Chief Justice, Mr Andrew Kwok-nang Li gives his address at the Concert Hall of the City Hall. The audience included judges and judicial officers, members of the legal profession and other guests, totalling about 810.