

CJ's speech at Ceremonial Opening of the Legal Year 2008 (with photos)

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 2008 today (January 14):

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 welcome all of you warmly to this Opening of the Legal Year. I thank you sincerely for your support by your presence.

In particular, we are honoured by the presence this year of the President or representative of the Bar Association or Law Society of Korea, Macau and Singapore. I would like to welcome them to Hong Kong and I thank them for their attendance.

Sentencing

A substantial part of the courts' work consists of the administration of criminal justice. Sentencing is an essential part of this process. It is an exercise of the courts' independent judicial power. Where a defendant pleads guilty or is found guilty after trial, it is the court's duty to impose a just and appropriate sentence, applying the relevant principles to the circumstances of the crime and those of the offender. Reasons for the sentence are given.

The main objectives of sentencing are retribution, deterrence, prevention and rehabilitation. All of them serve the public interest. Sometimes, seeking to attain one objective may lead to a more severe sentence whilst seeking to achieve another may tend towards a more lenient sentence. The judge has to consider all the circumstances of the case and decide on the appropriate degree of significance that should be given to each objective in that case. When setting sentencing levels, the courts take into account all relevant factors. These include the prevalence of certain types of offences and public concern over such prevalence.

The context for any sentencing decision is the maximum penalty provided for in the legislation. The judge considers the case before the court against the worst case of its kind for which the statutory maximum may be appropriate. Where the statutory maximum is considered to be inadequate, its revision is a matter for the Executive and the Legislature.

For certain types of crime, the Court of Appeal has laid down guidelines for sentencing for the purpose of promoting broad consistency. For example, for the offence of trafficking in dangerous drugs, guidelines have been laid down depending on the type of drug and the quantity involved. They provide guidance to judges in the exercise of their sentencing power.

The courts make sentencing decisions day in and day out in a very large number of cases. The circumstances which arise in the cases are of an infinite variety. Deciding on a just and appropriate sentence in each case is a challenging and difficult task for the courts. Sentencing has been described as an art and not a science. Certainly, there is no mathematical formula for its determination. It is a matter for balanced judgement. Ultimately, it is important that sentencing decisions by the courts command the respect and the confidence of the community.

From time to time, views have been expressed in the public arena that the sentence imposed in a particular case was inappropriate, as either too severe or too lenient. Having regard to the nature of the task, different views of a particular sentence are understandable and are respected.

In a society which values freedom of speech as a fundamental right, all court decisions, including sentencing decisions, are open to public discussion. Such discussion is most meaningful when it is well informed and well considered, taking into account the circumstances of the case in question and the reasons of the sentencing judge. Where the Secretary for Justice considers the sentence in a particular case to be manifestly inadequate or excessive, he may apply to the Court of Appeal for the sentence to be reviewed.

Civil Justice Reform

Implementation of Civil Justice Reform, for which the Steering Committee under the chairmanship of the Chief Judge of the High Court is responsible, is progressing well. As far as the legislative exercise is concerned, the Bills Committee of the Legislative Council has finalised its deliberations on the proposed amendments to the primary legislation.

As regards the proposed subsidiary legislation, that is, the rules of court, the Steering Committee issued a further document in October 2007 to consult on certain revised proposals for amendment to the draft rules. Having considered the views submitted in response, it will be making appropriate changes to the draft rules before putting them to the relevant LegCo sub-committee for consideration. It is expected that the legislation,

both primary and subsidiary, will be enacted well before the end of the current term of the Legislative Council in the summer of 2008.

Thorough preparation will be critical for the successful implementation of the reform. In late 2008 and early 2009, the Judiciary will be conducting training for judges at all levels of court as well as support staff. It is expected that all judges (ranging from myself to the most junior judicial officer) will be attending a training course, consisting of two lectures and three half-day small class interactive sessions. Planning for the course, which will be conducted by judges, is well in hand. Very substantial resources, including judicial time, will be involved in operating the course. A separate course will be run for our support staff. At the same time, the legal profession will no doubt organise its own training to prepare practitioners for implementation.

After training and the preparation of the necessary infrastructural support, the reform should be ready for implementation. The target date is April 2, 2009 when the relevant legislation will be brought into force.

The reform of our civil justice system is a major initiative to improve its effectiveness. When implemented, the reform should stand us in good stead for many years to come. I am confident that all concerned, the judges, our support staff and the legal profession will do their utmost to ensure its successful implementation.

Mediation

Mediation is an alternative method of dispute resolution which is complementary to that of litigation. Its promotion is plainly in the public interest. As an alternative to adversarial litigation, its benefits are well known. For the parties, with settlement at a relatively early stage of their dispute, the reduction in stress, the saving of time and costs and the achievement of a satisfactory solution, including, the maintenance of a continuing relationship. And for society, the economic and social benefits of alleviating conflict and achieving harmony.

Mediation is being encouraged not because the courts cannot cope with the caseload but because of its benefits. Having regard to them, the parties may consider that it is in their own interests to attempt to achieve satisfactory resolution of their dispute through mediation.

The benefits of mediation have been increasingly recognised in Hong Kong. The governing bodies of both branches of the legal profession fully understand its importance and are committed to its development. The promotion of mediation is now a matter of Government policy. In his Policy Address in October 2007, the Chief Executive

announced the establishment of a cross-sector group headed by the Secretary for Justice to map out plans to employ mediation more extensively and effectively.

The Working Party in the Judiciary under the chairmanship of Mr Justice Lam is starting a pilot scheme in January 2008 to promote mediation in building management cases in the Lands Tribunal. We have already achieved considerable success in encouraging mediation in family disputes and also in construction disputes.

It is important that legal aid funds should be available to cover the costs of mediation where the legally aided party wishes to attempt it. As mediation provides an alternative method which is often more satisfactory for the parties than litigation, it is only fair and reasonable that this method should be available to legally-aided parties who wish to undertake it. There is no justification for depriving them of this effective process for dispute resolution. Further, it is likely to result in savings for the public purse.

I therefore welcome the recent statement by the Secretary for Justice that "the Government now intends to establish mediation in legally-aided matrimonial cases as a permanent feature of the legal aid service, and is working on the detailed features of the permanent scheme". I believe that consideration should be given in due course to extending legal aid for mediation in other types of cases.

We have a long way to go before mediation reaches a state of maturity comparable to that in many common law jurisdictions. Steady progress has been made in recent years and it is heartening to note that momentum is gathering pace.

Solicitors' Rights of Audience

The Working Party on Solicitors' Rights of Audience under the chairmanship of Mr Justice Bokhary has delivered its Final Report. I have accepted its recommendations and have requested the Administration to give the matter due consideration and to take it forward by appropriate legislation.

Under the recommendations, a Higher Rights Assessment Board should be established to decide on the solicitors who should be granted higher rights of audience. It should be chaired by a senior judge, and comprises judges, barristers, solicitors, a law officer and a layperson. Applicants for higher rights must have five years post-qualification experience. And the three years before the application must include what the board considers to be sufficient litigation experience, with the greatest weight being given to actual advocacy.

The question of higher rights of audience has been much debated over the years. The public interest requires that there should continue to be a strong and independent Bar. At the same time, it is in the public interest that there should be a high standard of advocacy before the courts and that the pool of advocates capable of reaching that standard should be enlarged. The Working Party is to be congratulated for providing a well considered solution to this vexed question, taking into account all these facets of the public interest.

Conclusion

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 14, 2008

Issued at HKT 18:15

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The Honourable Chief Justice, Mr Andrew Kwok-nang Li, today (January 14) inspects the Guard of Honour mounted by the Hong Kong Police Force at Edinburgh Place, during the Ceremonial Opening of the Legal Year 2008.



The Honourable Chief Justice, Mr Andrew Kwok-nang Li, gives his address at the Concert Hall of the City Hall. The audience of about 900, included judges and judicial officers, members of the legal profession and other guests.