

The following is the full text of the speech delivered by the Hon Chief Justice Andrew Kwok-nang Li at the Ceremonial Opening of the Legal Year 2010 today (January 11):

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. This is the 13th and the last address which I have the honour of giving at this event.

This year, we are particularly honoured by the presence of a number of distinguished visitors, including Vice-President Wan Exiang of the Supreme People's Court; Mr Zhang Fusen of the Chinese People's Political Consultative Conference; Chief Justice Zaki Azmi of Malaysia; Chief Justice Spigelman of New South Wales and judges from various jurisdictions attending the Commercial Litigation Seminar; and the leaders of the legal profession from the Mainland, Macau, Taiwan, France, Korea and the Philippines. I would like to welcome all of them to Hong Kong and to thank them for their attendance.

Judicial Independence

It is now over 12 years since Hong Kong entered the new constitutional order as part of China under the principle of "one country, two systems". During this period, judicial independence has been universally recognised and accepted to be of pivotal importance to Hong Kong. The constitutional guarantees for an independent Judiciary have been fully implemented. Further, conventions and practices which accord with judicial independence have developed.

It is essential to judicial independence that the process of judicial appointment should never be politicised. In our jurisdiction, it has not been politicised and I trust that it will never be. This includes the endorsement process in the Legislative Council for the most senior judicial appointments.

I am glad to see that the Legislative Council has adopted a procedure for dealing with endorsement which ensures that whilst enabling it to discharge its duty, the process is not politicised. I am confident that the Council will continue to deal with the process of endorsement without politicising it.

Role of the Judiciary

Each jurisdiction has its own constitutional arrangements distributing power between the executive, legislative and judicial branches and providing for the relationships between them. The arrangement for each jurisdiction reflects its own history and its own circumstances. The arrangement for one jurisdiction may not be appropriate for another.

It is important for the role of the independent Judiciary in Hong Kong to be reiterated and strongly emphasised and for its role to be clearly understood. The Hong Kong's system involves checks and balances between the Executive, the Legislature and the Judiciary. The independent Judiciary has a vital constitutional role to ensure that the acts of the Executive and the Legislature comply fully with the Basic Law and the law and that our fundamental rights and freedoms, which are at the heart of Hong Kong's system, are fully safeguarded.

Everyone, including all organs of government and all public officials, are subject to and equal before the law. The Judiciary is and must be seen to be impartial. Judges resolve all disputes, whether between citizens or between citizen and government in an impartial manner.

In dealing with cases involving the Executive or the Legislature, Judges adopt neither a confrontational approach nor an approach designed to favour them. They simply administer justice without fear or favour. So where the Executive or the Legislature is successful in a case, this is not the result of the court seeking to favour them. Equally where a judgment goes against the Executive or the Legislature, the court is not seeking to confront them. In either case, the court is simply discharging its constitutional duty of adjudicating the dispute fairly and impartially.

Judicial review

A major development in the legal landscape since 1997 has undoubtedly been the growth of judicial review. Excluding the right of abode cases, 116 applications for judicial review were filed in 2001. In 2005, the number had grown to 149. In the last few years, the number ranged from 132 in 2006 to 147 in 2008. In 2009, 144 applications were filed.

This is a common phenomenon in many common law jurisdictions. I have previously explained publicly the factors which have led to it in the Hong Kong context: the growth

in the volume of legislation to deal with an increasingly complex society, the enactment of the Bill of Rights and the Basic Law and the greater awareness on the part of citizens of their rights. I have also previously made clear that the court's role on judicial review is only to define the limits of legality. And that the solution to political, social and economic problems cannot be found through the legal process and can only be found through the political process.

It is interesting to examine the figures in the last two years. In 2008, 147 applications for judicial review were filed. Leaving aside those which had been withdrawn and those which were still pending at the end of the year, 130 applications were dealt with. Leave was granted in 66 cases and refused in 64 cases, that is, 49%. The picture for 2009 was not materially different. Of the 119 cases dealt with, leave was granted in 63 cases and refused in 56 cases, that is, 47%.

So, in the past two years, a substantial number of applications for judicial review were refused at the initial leave stage because they failed to meet the threshold test of a reasonably arguable case laid down by the Court of Final Appeal in November 2007. These figures provide food for thought and the community may consider it worthwhile to reflect on them.

The Court of Final Appeal

Over the last 12 years, the Court of Final Appeal has been functioning smoothly. The Court is now hearing about 40 appeals a year and dealing with about 150 applications for leave to appeal, of which about 50-60% are disposed of on the papers without a hearing.

The participation of one non-permanent overseas judge in the collegiate court of five judges drawn from a panel of eminent judges from Australia, New Zealand and the United Kingdom has worked well. Of course, as is well appreciated by the overseas judges, when they sit on the Court, they function as and only as Hong Kong judges in Hong Kong's own circumstances under "one country, two systems". I am delighted to have on the platform today as part of our Judiciary, Sir Anthony Mason, the former Chief Justice of Australia, who has made such a signal contribution to our Court.

The Court is a relatively young court and we have much to learn. The Court's jurisprudence has been increasingly cited in other common law jurisdictions. I would venture to suggest that it has made good progress in establishing its stature.

Planning work is proceeding on the relocation of the Court to the present Legislative Council Building. Renovation works cannot start until the Council moves and the

relocation may be made in around 2014. The Building will presumably be the Court's permanent home and in order to ensure that the people of Hong Kong can be justly proud of it, we should make haste slowly in getting it ready.

I for one shall be nostalgic for the French Mission Building where the Court spent its formative years and which holds so many memories of the challenges during my tenure. But it will be time to move on.

Judges

The approximately 180 judges in the Judiciary have a strong collegiate spirit. In the last 12 years, we have recruited good talent from the legal profession at the magisterial, District Court and the Court of First Instance levels. I am pleased that the number joining at the higher levels has increased and that we have developed some momentum in this regard. And I am glad that we also have good judges who have the potential of advancing to higher levels.

But whatever position the Judge occupies in the Judiciary, his or her work is essential and makes an important contribution to the administration of justice. The work of supporting staff in Judiciary administration is also important and is greatly appreciated.

Judges are deeply conscious of the community's high expectations of the Judiciary. It is of fundamental importance that judges should observe the highest standards of conduct. I am glad that we have developed the Guide to Judicial Conduct and have operated a proper system for dealing with complaints against judges' conduct.

Exchanges with other Jurisdictions

Under "one country, two systems", it is of course important that Judges in the Mainland and Hong Kong have a mutual understanding of each other's system and the differences between them. In the last 12 years, we have made great efforts to develop this through conferences, visits, courses and the like. As the only common law jurisdiction in China under "one country, two systems", it is equally important that Hong Kong continues to maintain its links with leading common law jurisdictions through similar activities.

The Legal Profession

A competent and independent legal profession is of crucial importance to our community and is indeed essential to the functioning of an independent Judiciary. Conditions in the profession are increasingly competitive. But whilst efficiency is necessary, ultimately, the practice of law cannot be treated merely as a business. It is an honourable profession with high ethical standards and with ideals of service. All lawyers should contribute their fair share to service of the profession and public service. They should also do their part to develop pro bono services which are much needed.

The long standing issue of higher rights of audience for solicitors has been satisfactorily resolved with the support of all stakeholders. The necessary legislation will soon be enacted and will be brought into force later this year. The Higher Rights Assessment Board to be chaired by a judge will then be established. I am confident that the Board will ensure that whilst widening the choice of advocates for users, high standards of advocacy will be maintained.

This issue was first raised by the Law Society well over a decade ago. Although it had taken some considerable time to settle, it has been worthwhile to take time to evolve a consensus solution.

Civil Justice Reform and Mediation

Civil Justice Reform has been a major exercise. Under the leadership of the Chief Judge of the High Court and with the support of judges and supporting staff, its implementation in April 2009 went smoothly. But it will take some time for the Reform to fully settle in. A central feature is active case management by the court. In due time, this will bring about a change of culture in the conduct of litigation which would increase cost-effectiveness and ensure expedition. Another key feature is the facilitation by the court of the settlement of disputes by encouraging parties to engage in mediation. The relevant Practice Direction came into force on 1 January. It is expected that mediated settlements satisfactory to the parties will significantly increase. A Committee chaired by the Chief Judge is monitoring the working of the reformed system.

Access to Justice

As we stand at the threshold of the second decade of the 21st century, our judicial system faces the major challenge of seeking to ensure access to justice for all. The rich and the big corporations may be able to afford to litigate. Those with low income are

eligible for legal aid. But the bulk of the population, including small and medium enterprises, find it difficult to afford the legal fees involved in litigation.

To maintain the Judiciary's impartiality, our Resource Centre for Unrepresented Litigants can only assist on procedure but cannot provide legal advice. There is no magic wand which can be waved to solve the problem. A number of measures are necessary to alleviate the situation, including making procedures less complex, the availability of pro bono services and the use of mediation.

Public resources are inevitably limited. But one area where they could be usefully employed is to provide citizens with the opportunity of obtaining legal advice at an early stage so that a dispute could either be avoided or resolved speedily. Everyone in the legal community should be concerned with and should contribute to meeting the challenges involved in ensuring access to justice for all.

Conclusion

Since I shall only be stepping down at the end of August, I shall not be bidding farewell now. This will be done at a farewell sitting in the Court of Final Appeal in July.

On this occasion, I shall only say that it has been the greatest honour of my life to serve as your Chief Justice and to be given an opportunity to contribute at this dawn of the new constitutional order of Hong Kong as part of China under "one country, two systems".

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. Thank you.

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The Honourable Chief Justice Andrew Kwok-nang Li today (January 11) inspected the guard of honour mounted by the Hong Kong Police Force at Edinburgh Place during the Ceremonial Opening of the Legal Year 2010.



The Honourable Chief Justice Andrew Kwok-nang Li today (January 11) addressed an audience, including judges and judicial officers, members of the legal profession and other guests. He was speaking at the Ceremonial Opening of the Legal Year 2010 at the Concert Hall of City Hall.