

The following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal Geoffrey Ma Tao-li, at the Ceremonial Opening of the Legal Year 2011 today (January 10):

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

On behalf of all my colleagues in the Judiciary, I extend a warm welcome to all of you to this year's Opening of the Legal Year. I am particularly pleased as well to see the presence of many young persons taking an interest in the workings of the Judiciary. In this, my first Opening of the Legal Year as Chief Justice, I want to discuss the fundamentals of the Rule of Law. The Rule of Law I have pledged to uphold for the whole of my tenure as Chief Justice, and it is this that underlines everything I do in this capacity.

The fundamentals of the Rule of Law

A constant theme in any serious discussion about Hong Kong – indeed, it is the single most common question I am asked – is the Rule of Law. Rightly so. It is often said the Rule of Law gives Hong Kong a competitive edge when one talks in terms of investment in Hong Kong. This may well be the case. Its particular importance, however, lies in the assurance to all who live here, all who work here, all who invest here and all institutions as well, that one's rights and liberties are fully recognised and protected. Whether or not you are exposed at any stage to court proceedings is not the point: even if you never appear in a court, you want the peace of mind that comes with the Rule of Law. It means this: rights and liberties that exist in Hong Kong will be protected, no one will be above the law, and everyone will be treated equally and in accordance with the law.

What are the fundamental features of the Rule of Law? There are three.

First, there is the existence of laws that respect the rights and the dignity of persons. Secondly, there must be in place an independent Judiciary which protects these laws. The third fundamental feature is the proper administration of justice so that, distilled to its essentials, justice is properly and effectively dispensed.

No elaboration is needed on my part on the first of these features. Before going into the other two, I would make the point that these what I have termed the fundamental

features of the Rule of Law are not part of some legal theory on my part, but they constitute core aspects of the Basic Law which governs Hong Kong.

### Judicial Independence

It is not only the Basic Law that mandates an independent Judiciary. The oath of office taken by every Judge and Judicial Officer (and this includes the Chief Justice) requires a loyalty to Hong Kong, adherence to the Basic Law, and the protection of rights and liberties.

It is impossible to discharge the requirements of this oath without an appreciation of what it means to be a member of an independent Judiciary. Justice requires that no one is above the law; in other words, equality. Justice also requires that an individual's rights and liberties must be protected even as against what may be the views of the majority of the public. The full extent of an individual's rights are not trumped by the views of any other person, or group of persons, or by any institution. The public interest, which judges must often consider in arriving at their decisions, requires this. Adherence to the content of the law and to its spirit, is paramount. The judicial oath requires judges to look no further than the law as applied to the facts. The starting point and the end position in any case, is the law.

This is the true role of the courts. The courts do not serve the people by solving political, social or economic issues. They are neither qualified nor constitutionally able to do so. However, where legal issues are concerned, this is the business of the courts and whatever the context or the controversy, the courts and judges will deal with these legal issues.

### The Administration of Justice

Justice lies in the proper and just resolution of disputes. However, justice can only be effectively dispensed if there is in place an open, structured and effective machinery.

One of the characteristics of Hong Kong's legal system is the requirement that every decision that determines the rights and liabilities of the parties who appear in the courts, whether in a civil or criminal context, must be based on evidence. The gathering of evidence, its presentation to the court and finally, the evaluation of it by the judge, all takes time. In most cases, this is a significant factor that accounts for what often seems to be the long time taken for disputes to be resolved or the determination of a criminal charge. Only when the facts are gathered do the real issues in a case emerge. And only

when the issues in a case crystallise, can progress be made in the eventual resolution of a dispute, whether through the process of the courts or otherwise.

## Civil Justice Reform

The Civil Justice Reform took effect from April 2009. The object of the Reform was to alter radically those procedural steps in civil proceedings that contributed to the two constant challenges that face any modern judiciary: delay and expense. Its single most important objective was also to remind judges and legal practitioners alike (solicitors and barristers) of the fundamentals of the conduct of civil proceedings, that is, (1) the elimination of unnecessary procedures which do little to facilitate the just resolution of a dispute; and (2) the promotion of a just settlement as an alternative to court determination. This reminder was seen to represent a change in culture, but it is essentially reverting to basics.

A few weeks ago, the Judiciary provided to the Legislative Council Panel on Administration of Justice and Legal Services, a Paper on the First Year's Implementation of the Civil Justice Reform. I am on the whole satisfied with the progress that has been made; certainly, we are headed the right direction. I am in particular pleased that the change in culture (which I have referred to earlier) has been embraced by judges and practitioners alike.

Certain individual innovations of the Reform that were expected to achieve a more immediate impact, have done so. For example, the use of sanctioned payments as a means of resolving disputes has been encouraging. In the area of appeals to the Court of Appeal in interlocutory matters, where permission to appeal is now required in order to eliminate unmeritorious appeals (in contrast to the previous position when appeals in interlocutory matters were not restricted), the number of such appeals in the first year have halved compared with the previous year.

There is still work to be done under the Civil Justice Reform and in relation to some of the aspects of the Reform, it will be necessary to look at statistics gathered over a few more years before one can evaluate the full impact. In this regard, the Monitoring Committee for the Civil Justice Reform, comprising members drawn from all major stakeholders in terms of the civil administration of justice, has the responsibility of assessing the progress made under the Reform, and where necessary, making recommendations with a view to improvement. I am grateful to all members for their participation and hard work.

Key persons in the Administration of Justice

Key persons in the administration of justice include the judges, legal practitioners and the litigants themselves. This list is not, however, exhaustive.

I have already mentioned the position of judges (I include within this term, judicial officers). It is imperative that the highest standards of ability and integrity are maintained. Without these qualities, the public (whom we serve) cannot have the confidence that a society needs to have in the Judiciary.

There will be, in the next few years, a number of judges reaching retirement age at all levels of court. Quality, and the highest standards of ability and integrity, will be maintained. We are in the course of finalising plans for the recruitment exercises. I am confident in this regard.

The maintenance of high standards among legal practitioners is also crucial to the administration of justice. In the provision of legal services to the public, legal practitioners are the key persons. In the administration of justice, the reason why both solicitors and barristers assume such importance and prominence, is that the courts rely heavily on them to enable judges to discharge their principal responsibility of properly and justly resolving disputes. We have in Hong Kong what is popularly called an adversarial system of justice, under which the court does not itself initiate any investigation into the facts, but relies instead on the parties presenting all relevant facts to it for determination. Such a system can only operate if legal practitioners discharge their duty of properly and conscientiously presenting all relevant facts and matters to the court.

It is important for all legal practitioners and law students to be reminded that the public interest demands that duties are owed by lawyers to the court, and that these are paramount. In the case of a conflict between the duties owed to the court and the duties owed to one's client, the duties to the court prevail. This is in the public interest in ensuring that justice is done.

All lawyers know the importance of the necessity for maintaining the highest standards of ability and integrity. It is the same high standards required of the Judiciary, and it is perhaps for this reason that the tradition has developed for able and experienced legal practitioners to join the Judiciary.

I now come to the litigants themselves. They are the reason for the existence of the courts and lawyers in the first place. The primary objective is to secure for these litigants a just resolution of their disputes. Many different factors come into play here which may at times pull in different directions – for instance, a speedy determination is naturally

desirable but not at the expense of a just outcome. The courts not only have the responsibility of arriving at the right balance, but also to realise that in many disputes, a just resolution does not only involve a court determination. The development in recent years of different means of dispute resolution alternative to the courts, signals perhaps the most important development in the administration of justice in the modern era. The various mechanisms that are being implemented, chief among them mediation, are to be encouraged and developed. Mediators and all those involved in alternative dispute resolution have also become relevant persons in the administration of justice.

Any discussion about litigants cannot be complete without a reference to litigants in person, that is litigants who do not have legal representation in court proceedings. In recent years, there has been an increase in such litigants in the courts. From the point of view of the litigants themselves, the law and legal procedures often represent unfamiliar territory. For this reason, the courts have to strike at times a difficult balance between assisting the litigant in person and straining to do so. The fact that a party is unrepresented should not disadvantage the party who is legally represented. For solicitors and barristers, there may at times also be perceived conflicts in acting in their client's best interests while at the same time being completely fair to the unrepresented litigant.

Litigants in person pose particular challenges to the Judiciary. The promotion of pro-bono legal services offered by the legal profession is to be encouraged. I am glad to say that the Administration continues to be supportive in this area. The discussion of a proposed extension of legal aid by way of the lowering of the financial threshold for recipients of legal aid is also to be welcomed.

## Conclusion

Today represents the last ceremonial Opening of the Legal Year for a few judges who are retiring in the coming year. All of them have provided sterling service and commitment to the Judiciary. I single out in particular Mr Justice Anthony Rogers and Mr Justice Woo Kwok Hing, both Vice Presidents of the Court of Appeal. They have both made an invaluable contribution to the work of the Judiciary. I take this opportunity to applaud them and to thank them. I also wish them, as well as all other judges who are retiring, a happy retirement.

Lastly, we are much honoured, I in particular, by the presence of the former Chief Justice and of the Chief Justice before him. Chief Justice Yang and Chief Justice Li have both made significant contributions to upholding the Rule of Law and to Hong Kong. They have left a rich legacy. I did not have the honour of working with Chief Justice Yang. I worked for nine years with Chief Justice Li. I take this opportunity to express my personal gratitude to him for his guidance all these years.

It only remains for me to wish you and your families good health and much happiness in the New Year. Thank you.

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The Chief Justice of the Court of Final Appeal Geoffrey Ma Tao-li inspects the guard of honour presented by the Hong Kong Police Force at Edinburgh Place, during the Ceremonial Opening of the Legal Year 2011, today (January 10) .



Mr Ma addresses more than 900 attendees, including judges, judicial officers and members of the legal profession, at the Concert Hall of the City Hall, today (January 10).