

**Speech by The Honourable Chief Justice Geoffrey Ma
at the 7th Asia Pro Bono Conference
25 October 2018, Hong Kong¹**

1. It gives me great pleasure and it is of course an honour to be asked to say a few words this morning to open the 7th Asia Pro Bono Conference, taking place for the first time in Hong Kong. I welcome all delegates, particularly those who have travelled from afar.

2. Many discussions begin with the various ways of defining “*pro bono publico*”: the one I would like to use is the reference to the professional responsibility of legal practitioners to play a meaningful and proper role in the overall administration of justice. This is universal although I

¹ I wish to acknowledge the assistance received from the following Judicial Assistants of the Hong Kong Court of Final Appeal: Mr Griffith Cheng LLB (University of Hong Kong), LLM (London School of Economics), PCLL (University of Hong Kong); Ms Hayley Wong LLB (University of Birmingham), LLM (University College London), PCLL (Chinese University of Hong Kong).

will deal principally with the position in Hong Kong. It is, however, useful first to see this topic in an overall context.

3. Much as one would like to think that the ordinary person's exposure to the law is limited, just a moment's further thought will enable most people to realize that this is simply not true. It may be that most people will not often if ever be exposed to litigation or have to go to court, but the law constantly affects people's lives to a significant extent. When this happens, it usually causes concern, is considerably exacerbated when a legal dispute occurs, more so when one becomes an unwilling party to such a dispute and traumatically more so when court proceedings loom on the horizon. You can quite easily imagine the fear that is instilled into persons who are vulnerable – people such as minority groups, victims of sexual violence or oppression, persons who find themselves in a foreign land – imagine the stress that

such persons will have to endure when confronted with the law.

4. It is with this in mind that I look at the guarantees contained in constitutions or constitutional documents. The constitutional document governing Hong Kong is the Basic Law.² In this document are constitutional guarantees found in most constitutional documents but relevant for present purposes are the equality provisions contained in Article 25 (and also in the International Covenant on Civil and Political Rights which is implemented in Hong Kong under the Hong Kong Bill of Rights Ordinance³) (the guarantee that everyone is equal before the law) and the important Article 35 which states as follows :-

² The document is called the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, promulgated on 4 April 1990, coming into effect on 1 July 1997 upon the resumption of the exercise of sovereignty over Hong Kong by the PRC.

³ Cap. 383.

“Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.”

5. Article 35 of the Basic Law is often referred to as the access to justice provision in the Basic Law and while evidently its wording is directed at access to the courts and to judicial remedies, the overall spirit of the provision clearly embraces the concept of access to justice in general.

6. So how then does a community discharge its obligations regarding access to justice? I do not believe anyone will contradict the statement that there is an obligation to ensure (at least attempt to ensure) that everyone in a community should have adequate access to justice. The more relevant question is how the obligation is discharged. The theme of this Conference is “Inspire” and “Impact”: inspiring all relevant stakeholders to develop and implement pro bono initiatives and making an impact where it is most needed. These are broad themes but they can be addressed looking from different viewpoints. The main stakeholders in the context of pro bono services are governments and the legal profession; there are of course others. It is in respect of the legal profession that I wish to say a little more presently.

7. In relation to governments, closely linked to pro bono services is the availability of legal aid. The availability

of legal aid is perhaps the most significant facet of providing access to the courts. Hong Kong has on the whole a workable and good system of legal aid, although as with all institutions improvements can be made. This is not the occasion to go into this topic, but it is right to acknowledge both its importance and its limitations. The importance of course lies in the fact that many people who would otherwise not have been in a position to enforce their legal entitlements in court have been able to do so. In Hong Kong, legal aid has traditionally applied most in areas such as family law, personal injury law, immigration, employment law etc.⁴ Particularly in recent years, however, legal aid has also significantly benefitted persons in public law cases in Hong Kong. A large proportion of the most significant cases in constitutional law since 1997 have involved at least one party

⁴ This is to be contrasted with the more limited availability of legal aid in the United Kingdom. For example, there is no legal aid available for personal injury cases (these being dealt with under conditional fee arrangements), and only limited legal aid available in family cases, unless domestic violence is involved. For immigration cases, legal aid is unavailable in the UK unless asylum or detention is involved.

being able to obtain legal aid. The limitations on legal aid are equally clear. Owing to the means requirement to qualify for it, many persons find themselves ineligible to apply for legal aid, yet will scarcely have the means to enable them to go to court. The other significant limitation of legal aid is that where legal advice is required, as opposed to where court proceedings are involved, legal aid will generally not be available.⁵ This is where pro bono legal services step in.

8. Other than the legal profession, there are a number of institutions in Hong Kong (there will be equivalents in other jurisdictions) that effectively provide pro bono services to assist those who are, for any reason, unable to afford lawyers:-

⁵ See the scope of legal aid contained in the Criminal Procedure Ordinance Cap. 221 (for criminal cases) and the Legal Aid Ordinance Cap. 91 (for civil cases).

- (1) The Judiciary has a Resource Centre for Unrepresented Litigants which provides assistance to litigants in person (LIPs as they are known in Hong Kong) by providing guidance on procedural matters in civil cases. The court staff do not, however, provide any advice on the merits of cases.
- (2) The Government also operates a Procedural Advice Scheme providing free legal advice on civil procedural matters for LIPs who satisfy the income eligibility limit and have not engaged lawyers nor been granted legal aid.
- (3) Tertiary educational institutions are also active in the provision of pro bono services. The University of Hong Kong runs a number of schemes which enable law students to provide (under supervision)

legal advice. Qualified lawyers also assist in the provision of legal advice under these schemes. In the United Kingdom, there is a long tradition of university law schools providing pro bono legal services. Usually, the students of these law schools work in conjunction with and under the guidance of barristers and solicitors. The variety of topics undertaken by pro bono providers in the UK is extremely wide, covering not only the usual areas but also, for instance, legal aspects of sexual orientation, the environment, mental capacity, sport, health etc. After the Grenfell Tower fire tragedy in 2017, the University College London Integrated Legal Advice Clinic provided much assistance to the residents affected by the incident.

(4) There are also a number of non-governmental organizations (these are called NGOs) providing assistance to specific groups such as migrants, refugees, women who have been subject to violence and other vulnerable persons.

9. It is, however, principally to the legal profession one looks when discussing the provision of pro bono services. I should first make it clear that there is no doubt that many lawyers do devote much time to pro bono work. Further, there is no doubt that the governing bodies of the legal professions in all jurisdictions represented in this Conference fully support the provision of pro bono services. I should briefly mention the position in Hong Kong. Here, it should be noted that there are two branches to the legal profession: solicitors and barristers.

10. The Hong Kong Bar Association (the governing body for over 1,400 barristers in Hong Kong) and the Law Society of Hong Kong (the governing body for over 10,000 solicitors) jointly operate the Duty Lawyer Service, an organization which is fully subvented by the Hong Kong Government. The Duty Lawyer Service operates four legal assistance schemes:-

- (1) The Duty Lawyer Scheme provides legal representation by lawyers in private practice in the Magistrates Courts, Juvenile Courts and in Coroners Inquests. The legal representation ranges from applications for bail through to trials and, where applicable, pleas in mitigation. The Scheme operates in every Magistrates Court in Hong Kong. Last year, nearly 24,000 defendants were represented under this Scheme.

- (2) The Free Legal Advice Scheme enables legal advice to be given by lawyers to members of the public (without any means testing) on virtually any legal topic. The Scheme operates in nine districts in Hong Kong. The volunteer lawyers who provide the advice usually go in the evenings. Last year, nearly 6,500 persons were advised by over 700 volunteer lawyers.
- (3) The Tel-Law Scheme consists of pre-recorded legal information on a wide range of topics. There are about 80 topics at present broadly covering main areas such as family law, landlord and tenant, employment law, environmental law, commercial law, constitutional law. In 2017, there were a total of 17,738 calls made under this Scheme.

(4) The Legal Assistance Scheme in relation to claims made under the Convention Against Torture and also Non-Refoulement Claims. Nearly 3,500 claims were handled last year.

11. The Law Society of Hong Kong regards the provision of pro bono services as being of crucial importance and actively encourages its members to engage in pro bono services. Apart from the Duty Lawyer Scheme, the Law Society also provides the following services: a free consultation service and a free legal hotline. Every year, the Law Society organizes what is known as a “Law Week”. It also gives awards to those solicitors who have devoted significant amounts of time to providing pro bono services.

12. Equally, the Hong Kong Bar Association also encourages barristers to devote themselves to providing pro

bono services. It has a Bar Free Legal Service Scheme and this extends to providing legal representation in the courts. There have been a number of cases in the Court of Final Appeal (which is the highest level of court in Hong Kong) in which members of the Bar have acted under this Scheme.

13. I fully accept that many members of the legal profession in Hong Kong, both barristers and solicitors, have to their great credit devoted much time and energy to the provision of pro bono services. I would like, however, to see even more involvement by more lawyers. Although statistics are not readily available, partly because compared with other legal topics pro bono services is not a popular subject to write about, it is likely that the vast majority of legal practitioners do not participate in providing pro bono services. I do not mean this as in any way a criticism of the profession but when I see so many lawyers making the effort to provide pro bono

services, I often wonder why others do not follow suit. In my own case, even though in my later years of practice after I had taken silk I did less pro bono work, in my earlier years in practice I devoted a fair amount of time to such work. Hong Kong is a relatively prosperous place and I think the legal profession has on the whole benefitted well from the community. Every year, during the last week of October, Pro Bono Week takes place and this is celebrated by the legal profession and students worldwide. It would be good to see more involvement from the profession in this regard.

14. In order to encourage more lawyers to perform pro bono work, perhaps a clarification in mindset is required and a proper view taken of the scope of a lawyer's duties. When one refers to the duties of a lawyer, most people think in two dimensional terms: a duty to one's client and duties owed to the court. If pressed, lawyers may even refer to a duty owed

to one's firm or even to oneself. Today is not the occasion to discuss such other duties, nor the perennial question of whether the practice of law should be treated, as it is often said to be, a business. Rather, I want to deal with another facet of a lawyer's duties and this is the wider duty owed to the community to act in the public interest. Whenever I talk to law students and to newly qualified lawyers, they talk about the need to serve the public interest. And yet as lawyers develop their legal careers, some seem to put to one side the need to serve the community in real terms. Service to the community can be provided in a number of ways, such as by informing the public of the true meaning of the rule of law, serving on public committees, essentially giving the community the benefit of one's knowledge of and experience in the law. It is important to convey to lawyers the idea⁶ that law should be practised in a true spirit of public service and to

⁶ In the words of Menon CJ in the Valedictory Reference in Honour of Justice Chao Hick Tim on his retirement on 27 September 2017.

remind the public that there is ultimately immense good in the law. The law is not just a set of arbitrary rules: the ‘good’ that is in the law is that it seeks not only to respect the rights of individuals but to respect the collective rights of everyone in a community. The challenge then is to ensure that all (or at least most) persons are able to understand their rights and to be properly advised as to where they stand legally. This is where pro bono services assume importance as a facet of serving the public interest.

15. There is a long history of pro bono work undertaken by lawyers. In the 16th Century, lawyers in England (the serjeants at law) were expected to assist the poor without expectation of reward. This followed the lead of the Statute of 11 Henry VII, c12 which permitted the right to institute legal proceedings *in forma pauperis*, carrying with it an

obligation on counsel to act without reward and be appointed for such cases.

16. A quick look at the programme for this Conference will demonstrate how much more complex and sophisticated the provision of pro bono services has become in contemporary times. This is inevitable given the complexities of the modern era. The movement of people, whether willingly or unfortunately otherwise, is but one example of the many challenging areas as far as the law is concerned.⁷ These involve complex areas for lawyers. For those who are not lawyers, it can be a gigantic struggle at times to understand what is going on.

17. Pro bono services relate more commonly to everyday problems. The advice given may be obvious to a

⁷ I note that one of the sessions deals with refugees and resettlement. Another session deals with the aspect of globalizing pro bono.

lawyer but it will not be to laymen, and yet the impact could be immense. I need only point, from personal experience and this will be the experience of many of you present today, to areas such as family law, landlord and tenant, employment law, consumer protection and probate.

18. Codes of Conduct of legal professions do not state it to be a duty as such of lawyers to have to engage in pro bono work. However, it is clear that all governing bodies of the legal profession hint at and encourage the provision of pro bono services:-

- (1) This is certainly so in the case of the Hong Kong Bar Association and the Law Society of Hong Kong, as I have earlier mentioned.

(2) I have also looked at the position in a number of other jurisdictions and it is very much the case that the provision of pro bono services is treated seriously. This is the position in the civil law jurisdictions such as the PRC, France and Germany; and in common law jurisdictions such as the United Kingdom, Australia, Canada, New Zealand, India, Northern Ireland, Singapore and the USA.

(3) I refer in particular to Australia and the US. The Australian Pro Bono Centre sets a target of at least 35 hours of pro bono services for each lawyer a year. In the United States, Rule 6.1 of the Model Rules of Professional Conduct states that every lawyer should aspire to render at least 50 hours of pro bono

services a year.⁸ These sentiments are exemplary. I would be extremely pleased if most lawyers in Hong Kong could devote even a fraction of these recommended hours to providing pro bono services.

19. In conclusion, as I mentioned earlier, not much is written about pro bono work and there is as a consequence little publicity about it. The public very often is unaware of the time and effort devoted to this very real and tangible public service. For me, those who devote themselves to this service are truly unsung heroes.

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⁸ In the United States, the provision of pro bono services by law firms, particularly the larger ones, is very much regarded as the norm.