

**Speech by The Honourable Chief Justice Geoffrey Ma
at the Opening of Hong Kong Legal Week 2020 cum
Opening of Hong Kong Legal Hub cum
Launch of Vision 2030 for Rule of Law
2 November 2020, Hong Kong**

1. As Hong Kong looks ahead with the launch today of Vision 2030 for Rule of Law, it is important to be reminded not only of the importance of the rule of law, but also of its essential components, because once understood, one can more easily see how it provides an essential blueprint for Hong Kong's future success as an integrated, harmonious community, not to mention economic relevance and success. The importance of the rule of law lies in understanding the function of the law itself in the first place. There are three principal functions:-

- (1) First, and this is often assumed by many to be the sum total of the rule of law: law and order. The rule

of law, however, means much more than this but it can be accepted the law and order, and within this description, the enforcement of the criminal law, is a part of the rule of law. This is because laws must be respected, for they generally set out rules or norms that govern the operation of society and the complex relationships that exist in a highly populated community.

- (2) Secondly, given these complex relationships that exist, disputes inevitably arise involving, for instance, money, property, wrongs done to one's person or reputation, family disputes etc. The rule of law requires to have in place a proper system for the adjudication of legal disputes. Such a system, which represents the practical implementation of the rule of law, is otherwise known as the

administration of justice. It is essential that the administration of justice is efficient and enjoys the confidence of all those who have recourse to it.

- (3) Thirdly, the rule of law recognises the notion not only that the law is there to govern the inter-relationships and inter-actions between members of a community, but it is there also to protect individual rights and freedoms that define the dignity that should be accorded to people. This third feature of the rule of law can be expressed as an acknowledgment of the rights of the individual, coupled with the respect for the rights of others in the community.

2. Essential to the concept of the rule of law is the need to have confidence in it. Such confidence can only exist

if the law applies to everyone without exception (and this includes not only individuals but also corporations and the government). The law must also be applied with equality always in mind.

3. Hong Kong is regarded as a jurisdiction where the rule of law exists and the launch today reinforces this. I would like now briefly to discuss what certain aspects of the rule of law mean in Hong Kong, namely, the meaning of an independent judiciary and the administration of justice. I will do so by reference to the document that sets out the constitutional position of Hong Kong – the Basic Law. The Basic Law, as we all know, was enacted by the National People's Congress and prescribes the systems to be practised in the HKSAR in order to ensure the implementation of the basic policies of the PRC regarding Hong Kong.

Independence of the Judiciary

4. It is useful first to see what it does not mean. It is crucial to understand that this concept – the independence of the judiciary – is not related to politics; it is instead the guiding concept that underlines the way judges discharge their constitutional responsibilities. The constitutional arrangement is that the judiciary is one of the three branches of government. Its role and responsibilities are clearly and unambiguously set out in the Basic Law. The judiciary has the duty to exercise judicial power. This means the duty to adjudicate on the law and on legal disputes, whether civil or criminal in nature. The judiciary has this duty because under the Basic Law (Article 2), the HKSAR enjoys “independent judicial power” and is “vested with independent power, including that of final adjudication” (Article 19). That Hong Kong is given this power by the NPC is an example of the constitutional model

of “one country two systems”. The institution which is to exercise this power is the judiciary and it does so “independently, free from any interference” (Article 85).

5. The requirement that the courts discharge this constitutional responsibility of exercising judicial power independently is, I stress, not related to politics and the courts are therefore not concerned with politics. The independence of the judiciary means in essence the responsibility and duty imposed on the courts to adjudicate on the law and on legal disputes fairly, evenly and strictly in accordance with legal principle and the spirit of the law. Underlying these precepts is the recognition that all are equal before the law. Article 25 of the Basic Law states that all are equal before the law and this of course includes the executive authorities, against whom legal proceedings can be instituted (see Article 35 of the Basic Law). In other words, no one is above the law. Not only that,

no one is able to influence the court in the adjudication of a legal dispute. All judicial decisions must be made strictly in accordance with the law, applying those fundamental notions of fairness, justice and equality.

6. The matters just discussed are of course reflected in the Judicial Oath taken by all judges. The taking of a solemn oath is required under Article 104 of the Basic Law. The Oath reiterates the independence of the judiciary in this way, requiring judges to uphold the Basic Law and discharge their judicial duties “conscientiously, dutifully, in full accordance with the law, honestly and with integrity” and “safeguard the law and administer justice without fear or favour, self-interest or deceit”.

The Administration of Justice

7. The legal system that is provided for Hong Kong is the common law system. In the present context, it is important to identify those features of our system that are relevant to the rule of law. These features are relevant in understanding administration of justice in Hong Kong.

8. I believe there are two aspects of the administration of justice that assume importance:-

- (1) First, the requirement of predictability. It is of fundamental importance that members of the public – and this includes corporations – are able to conduct their everyday affairs (whether commercial, financial, social or personal) knowing as precisely as they can where they stand as far as the law is

concerned. In other words, the law (which can be complicated) should so far as possible be predictable, certain and clear. It follows from this that the decisions of the court should be clear and comprehensive in their reasoning, and that these reasoned decisions or judgments are made publicly accessible. The reason why this is important is because judgments constitute precedents in our system of law. The doctrine of precedent is referred to in Article 84 of the Basic Law in stating that courts may refer to precedents of other common law jurisdictions.

- (2) Secondly, as just mentioned, the law can be complex and there is therefore much reliance placed on lawyers to provide the necessary assistance. The availability of lawyers providing legal services is

another important characteristic of the administration of justice. Just as members of the judiciary are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions (Article 92 of the Basic Law) – and I would also add here the existence of non-permanent judges from other common law jurisdictions in the CFA (Article 82), so in the case of lawyers, the Basic Law (Article 94) makes provision not just for local lawyers to practise here but also lawyers from outside Hong Kong.

Conclusion

9. To conclude, I believe the rule of law will always be an essential characteristic of Hong Kong. It is something that

must be treasured and protected. Our community, indeed no community, can afford to have it undermined. In order to protect it, we must all understand what it really means.

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