

Speech by Secretary for Justice

Following is the speech by the Secretary for Justice, Ms Elsie Leung, at a luncheon organised by the Canadian Club, the Hong Kong-Canada Business Association (Toronto), the Hong Kong Economic and Trade Office and Hong Kong Trade Development Council, in Toronto, on November 19 (Canadian Time).

"One Country, Two Systems - Political Implications and Economic Opportunities for Hong Kong"

Distinguished guests, ladies and gentlemen,

Good afternoon, and thank you for this opportunity to speak with you today. I am here to provide an update on Hong Kong's development six years after reunification with the Mainland. At the same time, I also want to let you know that life in Hong Kong is back to its usual frenetic pace after the recent outbreak of SARS came to an end.

SARS

The people of Toronto are in a special position to understand the pain and suffering that this disease caused us in Hong Kong. Toronto and Hong Kong have long enjoyed close links; and indeed our main trade, tourism and government offices for Canada are located here in this lovely city by the lake. But this year we shared a new experience, the experience of trying to contain and fight a hitherto unknown disease. The disease caused enormous anxiety in both of our cities.

We have mourned the deaths of friends and relatives, as well as the loss of brave men and women from the health sector, who were at the frontline of this medical battle. I believe that I speak for all in Hong Kong by extending our deepest condolences to the families and friends of those who died; and our sympathy and well wishes to others who were infected by the disease and have since recovered.

Being at the crossroads of international trade and travel, we in Hong Kong remain vigilant against, and prepared for, another outbreak of the disease. Our medical experts predict that SARS may resurface again in winter. And that is why

we have maintained our strict health screening procedures at our airport, and at our land and sea entry and exit points. We have critically reviewed our experience during SARS and have developed new response mechanisms to deal with any future outbreaks. Of course, we are all hoping that we never have to implement those contingency plans. But we remain alert to the possibility. We are determined to tackle any new infections quickly, and with the utmost care, in order to minimise the chance of SARS spreading within our community, or beyond.

As everyone in Toronto knows, there was an economic cost to SARS, as well as a human cost. In Hong Kong, our tourism and related sectors were hit badly. Airlines, hotels, restaurants, retailers - all suffered a massive drop in business. Five months ago, when Hong Kong was taken off the World Health Organisation list of affected cities, we felt that the Hong Kong economy might also need a long convalescence before it was in healthy shape again. But, once again, Hong Kong has bounced back stronger than before. Our economic recovery has been faster and more robust than we could have imagined.

Tourist arrivals have rebounded strongly. Hotels are at near-capacity levels. Airline bookings have surged. Restaurants are full of customers. Retail sales have seen their first increases in value and volume in more than seven months. Unemployment is edging down. Deflation is moderating. There is much more activity in the property market. Stock market turnover has doubled compared to six months ago. And our export sector continues to register strong growth.

All of these indicators tell us that Hong Kong's economy has recovered well from the setbacks earlier this year. So much so that we recently revised our 2003 GDP growth forecast up to 3%, compared to the 2% forecast in August in the aftermath of SARS.

As always, we will not rest on our laurels. We understand that our economy is still in a recovery phase, and that we must do all we can to sustain that recovery. Whether that happens will depend a great deal on maintaining and boosting the recovery in business and consumer confidence. And the Hong Kong government is doing all it can to make sure that happens.

"One Country, Two Systems"

At this point you may ask : What does all this have to do with "One Country,

Two Systems"? My answer is: everything. That is because our development over the past six years, and our development in the future, hinges on the successful implementation of this unique and visionary concept. "One Country, Two Systems" has allowed us to maintain all of those elements that make us a special part of our country: our capitalist way of life, our legal system, all of the rights and freedoms we enjoy under the law. These are our advantages and we treasure them.

It is "One Country, Two Systems" that allows us to take part, in our own right, in international fora such as the World Trade Organisation, the World Customs Organisation, APEC, and the Asian Development Bank. It is "One Country, Two Systems" that allows us to invite esteemed judges from other common law jurisdictions to sit on the bench of our Court of Final Appeal. This not only helps us to maintain links with other common law jurisdictions, it also allows us to draw on a considerable reserve of international jurisprudence.

CEPA

Another recent and excellent example of "One Country, Two Systems" is the signing of a Closer Economic Partnership Arrangement - we call it CEPA - between the Mainland and Hong Kong. In the context of Canada, there would be no sense in a free trade agreement between the dominion of Canada and, say, the Province of Ontario. But given the fact that Hong Kong and the Mainland are separate members of WTO, and have their own customs controls and economic systems, there is everything to be gained by removing some of the barriers between them.

The fact that we in Hong Kong have negotiated a free trade pact with our sovereign power is in itself a powerful message. Two separate WTO members within the one country working together to make the most of our own strengths and advantages. Two separate WTO members agreeing on a range of measures to further open up trade and investment in the Mainland, and in Hong Kong.

The CEPA is a landmark agreement: it is the first free trade agreement signed by either China or Hong Kong; it highlights the Mainland's unwavering commitment to the faithful implementation of "One Country, Two Systems"; and it underscores the Mainland's more recent commitment to the rules-based global trading system.

The CEPA will provide Hong Kong companies with a head-start over the competition in accessing the post-WTO China market. And because of our level

playing field for business, the definition of a "Hong Kong company" includes foreign-linked companies that are incorporated in Hong Kong and that carry out substantive business operations in the city. Ownership, shareholding structure, ethnicity or nationality considerations do not figure in the definition. That means there are opportunities for the dozens of Canadian companies in Hong Kong.

The CEPA will be implemented from January 1 next year and covers three areas: trade in goods, trade in services, and trade and investment facilitation. For trade in goods, the Mainland has agreed to apply zero tariffs for Hong Kong exports that meet rules of origin requirements, in some 270 Mainland product codes. This will cover about 90 per cent of Hong Kong-made goods currently exported to the Mainland.

For services, 18 areas are covered. Service providers under the CEPA categories will gain access earlier than is provided under China's WTO commitments. In some sectors - such as audio-visual, construction, distribution, legal, logistics and transport services - the concessions extend beyond China's WTO commitments. In other words, earlier as well as enhanced access.

CEPA and legal services

At this point, I would like to focus on how the CEPA and China's WTO commitments will impact on the legal system in Hong Kong and China. I believe that Hong Kong stands to benefit greatly from this process, as a provider of legal services to international and Chinese business, and as a centre for alternative dispute resolution in the region.

China's WTO entry will undoubtedly have a major impact on global trade and investment. In simple terms, more international companies will do business in China, and more Chinese companies will do business in the international market. All of this extra trade and investment will require a sound legal underpinning, because foreign companies will not readily and consistently invest or trade in markets where they cannot enforce contracts or judgments. WTO membership is already serving as catalyst for the development of China's legal system, and increasing the momentum for change. From my own discussions with counterparts in the Mainland, I can tell you that the Chinese Judiciary is pushing ahead with reforms.

Some Mainland lawyers are extremely sophisticated in their practice, have a good command of English and IT, and have up-to-date information on legal

developments elsewhere in the world. However, until the late 1980s, lawyers in China were still state legal workers. An independent legal profession was only formally recognised by the enactment of the Lawyers Law of the PRC on May 15, 1996. There are approximately 120,000 lawyers in the Mainland, of whom about 80,000 are full time lawyers. Amongst them, only about 5,000 to 6,000 have the language proficiency and experience to handle international legal practice. So there will be considerable scope for Hong Kong-based law firms - local and international - to fill this gap.

Hong Kong has a long tradition of adherence to the common law system. It is a system that is easily understood and trusted by the international community. Local and international law firms compete for business in our market, and this has led to a cross-fertilisation of experience and cultures, as well as the development of a sophisticated legal sector that deals with the entire spectrum of legal work in areas such as capital markets, corporate finance, securities, intellectual property, information technology, and maritime law.

Hong Kong's legal system also offers a reassuring setting for litigation, arbitration, mediation and other forms of alternative dispute resolution. Awards made by the Hong Kong International Arbitration Centre are enforceable in the Mainland and in all contracting states of the New York Convention. That centre already handles about 300 cases per year, and this is likely to increase further as alternative dispute resolution becomes more popular.

It is not just international corporations that find comfort in the depth and breadth of experience we have in our legal sector. Mainland parties may also find there are benefits in using Hong Kong as a dispute resolution centre. We share the same language and culture, and we are extremely familiar with the way the Mainland market operates. So it is clear that the Hong Kong legal sector possesses unique advantages in serving the legal needs of both international and Mainland business.

While I have enormous faith in the ability of our lawyers to meet the challenges and opportunities thrown up by China's WTO accession, we in the government also have a responsibility to provide a favourable environment to promote Hong Kong's development as a legal services centre.

This we are doing by publicising the use of Hong Kong companies as an investment vehicle; the use of Hong Kong law as the applicable law for China-related

contracts; and the choice of Hong Kong courts and arbitral bodies as a forum for dispute resolution. We are also actively pursuing the setting up of a mechanism that will allow the reciprocal enforcement of court judgments between the Mainland and the HKSAR, in cases where the parties have agreed to submit to the exclusive jurisdiction of a court in either Hong Kong or China as the venue for dispute resolution.

As I mentioned, the CEPA will provide an added stimulus to the development of legal services in Hong Kong, and enhance our ability to serve both international and Mainland clients. Under CEPA, six areas will be further liberalised.

- * Hong Kong law firms with representative offices in the Mainland will be allowed to operate in association with Mainland law firms (but not in the form of partnerships). Hong Kong lawyers participating in such associations will not be able to handle matters of Mainland law.
- * Mainland law firms will be allowed to employ Hong Kong solicitors and barristers, but those employees must not handle matters of Mainland law.
- * Hong Kong lawyers who have already acquired Mainland lawyer qualifications will be allowed to intern and practise on non-litigation legal work in the Mainland.
- * Hong Kong permanent residents with Chinese citizenship will be allowed to sit the legal qualifying examination in the Mainland and acquire Mainland legal professional qualification in accordance with the "State Judicial Examination Implementation Measures".
- * Those who acquire Mainland legal professional qualifications will be allowed to engage in non-litigation legal work in Mainland law firms in accordance with the "Law of the People's Republic of China on Lawyers".
- * Minimum residency requirement will be waived for all Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms located in Shenzhen and Guangzhou. Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms elsewhere in the Mainland will have a shorter minimum residency requirement than foreign lawyers, of two months each year.

The "association" arrangement and shortened residency requirements will give a significant and immediate advantage to Hong Kong law firms wishing to extend their networks in the Mainland market. And this, over time, will help to increase further the reach of Hong Kong's international legal expertise into the Mainland. It will also provide a deeper reservoir of knowledge about Mainland legal practices back in Hong Kong.

Conclusion

Ladies and gentlemen, those of you who have visited Hong Kong will know that we live in one of the most dynamic and vibrant cities on earth. Our hard working and entrepreneurial people have capitalised on our close links with the Mainland to transform our economy over the past five decades from one reliant on manufacturing, to one in which 87% of our GDP comes from services. Nowadays, it is "Made by Hong Kong", rather than "Made in Hong Kong".

Under "One Country, Two Systems" we have retained those features, unique in China, indeed unique in most parts of Asia, that have underpinned our progress as an open, free and tolerant society under the rule of law.

Now, more than six years after reunification, we are leveraging all of these unique strengths to grasp the opportunities that will flow from a rapidly developing and more open Mainland market. China's WTO commitments are destined to enhance our position as the most strategic two-way platform for accessing that massive market; and for bringing more Chinese enterprises and goods onto the world market. And the signing of CEPA will provide even great opportunities for Hong Kong over the next couple of years.

We have been through some tough times in recent years, but I believe that we have turned the tide, and the best is yet to come.

Thank you very much.

Ends/Thursday, November 20, 2003