

Secretary for Justice's speech at Ceremonial Opening of the Legal Year 2016

Following is the speech by the Secretary for Justice, Mr Rimsky Yuen, SC, at the Ceremonial Opening of the Legal Year 2016 today (January 11):

Chief Justice, Members of the Judiciary, Chairman of the Bar Association, President of the Law Society, distinguished guests, ladies and gentlemen,

On behalf of the Department of Justice, may I extend our warmest welcome to all of you here, especially to our guests who travelled from other jurisdictions to attend this event.

The Rule of Law under "One Country, Two Systems"

The past year witnessed the 25th anniversary of the promulgation of the Basic Law, the constitutional document of the Hong Kong Special Administrative Region (Hong Kong SAR). Next year, we are going to celebrate the 20th birthday of the Hong Kong SAR. The window between these two important dates provides an opportune time to reflect on the implementation of the "one country, two systems" policy, and to explore what the Hong Kong SAR can further achieve in the years to come.

As the Secretary for Justice, one of the aspects under the "one country, two systems" policy that I attach the greatest importance is naturally the rule of law.

So, what is the rule of law situation in the Hong Kong SAR since 1997? Apart from self-assessment, one other option is to see how we are perceived by others. In this regard, the World Bank commissioned the Worldwide Governance Indicators project, which assessed the governance indicators of over 200 countries and territories

over the period from 1996 to 2014. One of the governance indicators is the rule of law indicator. From the figures which we can obtain, the aggregate indicator in respect of the rule of law in the Hong Kong SAR in 1998 is 80.4 (out of 100). Since 2003, the aggregate indicator achieved by the Hong Kong SAR has been consistently above 90, and achieved the indicator of 93.8 in the year 2014 (Note 1). This, in my view, provides an illustration as to how the international community perceives the rule of law situation in the Hong Kong SAR.

What about judicial independence, which is one of the most crucial aspects of the rule of law? Gladly, the state of judicial independence in the Hong Kong SAR has also received international recognition. In the latest Global Competitiveness Report 2015-2016 published by the World Economic Forum on September 30, 2015, the Hong Kong SAR is ranked fourth in terms of judicial independence out of 140 jurisdictions around the world.

One unique arrangement put in place by the Basic Law is that we may invite judges from other common law jurisdictions to sit in our Court of Final Appeal (Note 2). Since it was established in 1997, we have been having eminent judges from other common law jurisdictions sitting in our Court of Final Appeal and deciding cases involving matters of great public importance. This arrangement facilitates cross-fertilisation between the Hong Kong SAR and other common law jurisdictions, which is conducive to the healthy development of our legal system based on the common law. From the structural point of view and also from the perspective of the international community, the presence of leading judges from other common law jurisdictions is a strong testimony of the independence of our Judiciary.

Whilst past efforts have produced positive results, the road ahead is not without challenges. As has often been

said, the upholding of the rule of law requires eternal vigilance and the joint efforts of the Government, the legal profession, the Judiciary and indeed all of us in the community.

Certain incidents in the past year have provided causes for concerns. As the Hong Kong SAR is a pluralistic and cosmopolitan city, it is not surprising that different people may have divergent views on political, social or economic issues. Against this background, it is all the more important to ensure that the freedom of speech as well as the freedom of assembly, of procession and of demonstration as guaranteed under our Basic Law (Note 3) and our Bill of Rights (Note 4) are properly guarded. However, it is of equal importance that every person who seeks to exercise such rights should do so peacefully and within the limit permitted by the law. In certain past cases, participants of public order events had resorted to unlawful violence and even the use of dangerous materials which might potentially cause serious tragedies if not stopped in time. Such conducts should not have been tolerated, and if we cherish the rule of law, we (as responsible members of the community) should stand up and express our disapproval to such unlawful conducts so that history would not repeat itself.

Recently, the reported case concerning the missing of certain persons related to a bookstore has caused much concern as well as generated heated discussion in the community. Since the case is still being actively investigated by the Police, it is not appropriate to jump to any conclusion at this stage. However, the interests in the case and the concerns expressed are totally understandable and should be properly addressed.

Respect for fundamental human rights is an integral part of the rule of law. The right to liberty and security of person are firmly guaranteed under the Basic Law (Note 5)

and the Bill of Rights (Note 6). Except properly permitted under our laws, neither unauthorised criminal investigation nor unlawful arrest within the jurisdiction by anyone or any authority shall be tolerated. Any suspected case of infringement deserves full and thorough investigation, and this is what the Government is seeking to achieve.

I notice that some people in the community seek to link this case with the discussion over the co-location arrangement which the Government aims to put in place for the Hong Kong section of the high-speed railway under construction. Insofar as may be necessary, let me reiterate that any future co-location arrangement will be devised in strict compliance with the Basic Law and the spirit of the "one country, two systems" policy, so that the fundamental rights of Hong Kong people will be fully respected.

Positioning of the Hong Kong SAR

The rule of law is not just our core value. The rule of law together with our world-class legal infrastructure and the wealth of our professional talents are the attributes which enable the Hong Kong SAR to position itself from the macro perspective for future purposes.

As an international financial and commercial centre, the Hong Kong SAR can ill afford to ignore the impact brought about by the continuing process of globalisation, as well as the growing number of bilateral and multilateral trade or investment arrangements. Amongst others, the "Belt and Road" initiative will bring about new opportunities in cross-border trade and investments. On the other hand, how the Trans-Pacific Partnership, if and when implemented, would change the world economy and affect the Hong Kong SAR is a topic that deserves serious study.

One point is clear. To maintain the Hong Kong SAR's competitiveness, clear policy objectives and long-term

planning are indispensable. In this regard, the promotion of the Hong Kong SAR as a centre for international legal and dispute resolution services in the Asia-Pacific region by making the best use of the advantages enjoyed under the "one country, two systems" principle is and will continue to be our policy objective.

Over the years, considerable efforts have been made by the Government and the relevant stakeholders. Such efforts have not been futile. In the 2015 International Arbitration Survey released by the Queen Mary University of London, the Hong Kong SAR is ranked the third most preferred seat worldwide (just behind London and Paris), and is also rated the most preferred seat overall outside Europe. Besides, our home-grown Hong Kong International Arbitration Centre (HKIAC) is named as the most preferred arbitral institution outside Europe and also ranked as the third best arbitral institution worldwide.

Another recent achievement of the HKIAC is the setting up of its Shanghai Office in the China (Shanghai) Pilot Free Trade Zone in last November. This is a ground-breaking arrangement, since the HKIAC is the very first and so far the only international arbitration body which has an office in the Mainland.

Insofar as software is concerned, we are conducting a study on the arbitrability of intellectual property rights. Our aim is to introduce legislative amendments so as to make it clear that intellectual property disputes can be made subject matter of arbitration. At the same time, a sub-committee of the Law Reform Commission is looking into the question of third party funding for arbitration. The consultation paper it published in last October recommended the law to be clarified to the effect that, subject to certain conditions, third party funding for arbitration should be expressly allowed.

In the context of mediation, two areas of recent development merit attention. First, in December last year, the China Council for the Promotion of International Trade (CCPIT) joined hands with the Hong Kong Mediation Centre (HKMC) to establish the CCPIT-HKMC Joint Mediation Center in Hong Kong. The setting up of this centre is a milestone in the co-operation between the Mainland and the Hong Kong SAR in the promotion of mediation. Second, the Steering Committee on Mediation published a consultation paper on the enactment of apology legislation in Hong Kong in June last year. Thus far, the response received has been positive, and we intend to conduct further consultation on various specific issues in the near future.

On the whole, with the solid foundation thus far built up and the unique position enjoyed under the "one country, two systems" policy, the Hong Kong SAR should aim to advance further. Not only should the Hong Kong SAR aim to remain as the hub of international legal and dispute resolution services in the Asia-Pacific region, it should consider positioning itself as such a centre for the jurisdictions caught by the "Belt and Road" initiative.

Common Entrance Examination

Last week, the Law Society decided that starting from 2021, a person may only become a trainee solicitor if he or she passed a Common Entrance Examination (CEE). The CEE will be set and marked by the Law Society. Besides, the Law Society will require certified completion of the PCLL course, although it will not require any examination to be set by the providers of the PCLL course.

The Law Society's decision has attracted rather divergent views. Given the importance of legal education, the Department of Justice will be monitoring the development closely.

In our view, the ultimate yardstick for considering any changes to legal education and training is public interest, as opposed to the interests of the universities or those of the legal profession. After all, the legal profession is not a business but a vocation, and it exists to serve the community and to be a gatekeeper of the rule of law.

Any examination should be designed with at least three objectives in mind. First, it should ensure fairness to all those who aspire to join the legal profession. Second, it should ensure that our future legal profession would remain pluralistic. Students from different sectors of the community should have an equal chance to join the legal profession. Third, it should be effective to ensure good quality and integrity, which are the keys to maintaining public confidence in, and the competitiveness of, our future legal profession.

As and when it takes the matter forward, I hope the Law Society will work closely with all the relevant stakeholders so that an outcome satisfactory to all can be achieved.

On this note, may I wish all of you a joyful and rewarding 2016.

Thank you.

Note 1: See: Country Data Report for Hong Kong SAR, China 1996-2014, World Governance Indicators (World Bank).

Note 2: See: Article 82 of the Basic Law.

Note 3: See: Article 27 of the Basic Law.

Note 4: See: Articles 16 and 18 of the Hong Kong Bill of Rights (as set out under section 8 of the Bill of Rights Ordinance (Cap. 383), Laws of Hong Kong).

Note 5: See: Article 28 of the Basic Law.

Note 6: See: Article 5 of the Hong Kong Bill of Rights.

Ends/Monday, January 11, 2016