

Speech by Secretary for Justice

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the ceremonial opening of the Legal Year today (January 9):

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

Rule of law in Hong Kong

We take pride in the fact that the rule of law is firmly established in Hong Kong. Human rights and freedoms are guaranteed constitutionally by the Basic Law. In the Kwangju Forum for Asian Human Rights held in South Korea last month, Hong Kong was hailed by human rights activists as an example to other Asian countries so far as the rule of law is concerned.

Basic rights and freedoms must be defended and defended vigorously. But all causes, however legitimate or laudable, must be pursued according to the law. Whenever freedom is abused and violence is resorted to, legal proceedings must be expected, which will be conducted fairly, objectively and in accordance with the law.

The role of Secretary for Justice

Since my appointment as Secretary for Justice in October last year, reporters and Legislative Councillors alike have questioned me as to how I will respond if the Government does not act according to the law. Some have urged me to resign should I be caught in such a situation.

These questions stem from the assumption that the two masters whom I serve - the Government and the Law - are at loggerheads. They are not. It is true that I serve the Government, but the Government, like everyone else, is constitutionally obliged to abide by the Law under Article 64 of the Basic Law. The task of the Secretary for Justice and the Department of Justice is precisely to assist the Government to discharge that constitutional duty. In his capacity as principal legal adviser, the Secretary for Justice is duty-bound to give unbiased and reliable legal advice.

Within the office of Secretary for Justice, however, there are many more roles. I wear many different hats apart from this wig.

As one of the Principal Officials under the Accountability System, the Secretary for Justice is responsible to the Chief Executive. I am also a member of the Executive Council, participating in policy formulation and sharing collective responsibility with others in the Council.

However, in certain important areas, the Secretary for Justice is required constitutionally to act independently. Most significantly, under Article 63 of the Basic Law, the Department of Justice shall control criminal prosecutions, free from any interference.

This position of the Secretary for Justice in the HKSAR is by no means unique. It is common for Attorneys General in other jurisdictions to combine the roles as a member of the Government and as an independent Law Officer in relation to prosecutions and other legal decisions based on the public interest.

Prosecution

Independence is the hallmark of the prosecution function. It is guaranteed under the Basic Law and will be strongly defended.

There have been occasions where the department's decisions not to prosecute attracted criticism. They might not be the most "popular" decisions. However, if we were to make these decisions according to "popularity", the rule of law would be but shifting sands. Decisions whether to prosecute are made objectively, carefully and strictly in accordance with the system and principles detailed in our Statement of Prosecution Policy and Practice, which is a public document available on our website. They are made by colleagues who are the most experienced prosecutors in Hong Kong. It is our duty to decide, fairly and professionally, whether there is a reasonable prospect of securing a conviction and whether it is in the public interest to prosecute. The same yardstick is applied to every person irrespective of his or her status. We will be failing in our duty if we simply push controversial or bare prima facie cases to the court for determinations.

Public interest

Apart from enforcement of the criminal law, there are other public interest functions to perform. The Secretary for Justice, like the former Attorney General, is

the protector of charities, and will intervene in charitable cases where appropriate. In addition, various statutory powers have been given to the Secretary for Justice for the purpose of protecting the public interest.

Last year, two applications were made to prohibit vexatious litigants from abusing the process of the court, pursuant to s.27 of the High Court Ordinance. In one case, the vexatious litigant had taken out 201 applications in the 32 sets of proceedings commenced. Further, it is the duty of the Secretary for Justice to bring proceedings for contempt of court pursuant to Order 52 rule 3 of the Rules of the High Court. A particularly bad case last year saw the offender being sentenced to six months' imprisonment. We have also intervened to apply for an inquest to be conducted pursuant to section 20 of the Coroners Ordinance on the grounds of public interest.

The legal services provided by DoJ

As the Government's in-house lawyers, the Department of Justice is the largest legal practice in Hong Kong. We provide quality and cost-effective legal services including advisory, advocacy and drafting work. Further, the department possesses unparalleled expertise and experience in handling Government-related legal affairs.

In our continual efforts to improve quality of our legal services, we have embarked on numerous policy initiatives.

The mentorship programme of the Law Drafting Division is now in full swing. Six directorate counsel each takes on two to three non-directorate counsel as "mentees". Through advice, discussion and participation throughout the drafting process, the mentors generously impart their skills and experience to their mentees. Further, to broaden their experience, two draftsmen of Senior Government Counsel level have been posted to law drafting offices of the UK and Canada on short-term attachments.

On the prosecution side, with a view to developing the standard of appellate advocacy and preparation of criminal appeals, we are in the course of compiling a Criminal Appeals Manual. The manual will cover the practice and procedure of appeals in criminal cases and provide proforma documents and precedents on common topics and issues. High-level training will also be provided to develop the standards of appellate advocacy.

The Prosecutions Division is also working closely with the Police, the ICAC and the Customs on new guidelines on disclosure of relevant materials to the defence in criminal cases. These will provide better safeguards for the interests of the accused, and will assist the law enforcement agencies to discharge their duty of disclosure. As regards the victims of crime and witnesses, their welfare will be keenly protected by the Vulnerable Witness Team of eighteen dedicated prosecutors, and through the faithful implementation of the The Statement on the Treatment of Victims and Witnesses and The Victims of Crime Charter.

Internationally, we will continue to strengthen liaison with our counterparts in other jurisdictions to combat transnational organised crime such as internet fraud, child pornography, money laundering, and terrorism.

Legal policy and the promotion of the rule of law

Access to justice is an important facet of the rule of law. With a view to formulating long-term strategies in respect of access to justice, the Department of Justice has commissioned a consultancy study on the supply of and demand for legal and related services. In due course, the consultants' report will provide empirical evidence and analysis of the nature and extent of any current problem. This will be crucial data for future policy making. Meanwhile, our department is sponsoring the development of the Community Legal Information Centre website, which is a modern IT-based project to make information on common legal problems accessible bilingually to the community.

As regards the legal profession, there are many important issues affecting their practices which also have a strong bearing on the interests of the community. These include the Solicitors Professional Indemnity Scheme, rights of audience, the proposal to introduce limited liability partnerships, and concern over recovery agents. All these will be actively and carefully considered at different levels. In the meantime, we continue to make efforts to promote Hong Kong as an international dispute resolution centre, which include reviewing our arbitration law and mediation practices.

2005 saw more landmarks in the continual expansion of legal services into the Mainland market. According to the latest measures announced under CEPA in October, Hong Kong law firms would enjoy greater flexibility when forming associations with Mainland law firms. Also, the Ministry of Justice has agreed to the

Department of Justice's proposal to set up examination venues in Hong Kong for the State Judicial Examination from 2005 onwards. Over 270 candidates sat for the examination in three centres in Hong Kong in September 2005. I hope to visit the Mainland later this year with a view to exploring further opportunities for both barristers and solicitors. I will continue to build on the strong foundation in the legal cooperation with the Mainland, which is crucial for the successful implementation of the "One Country, Two Systems".

Conclusion

According to Professor Edwards, the author of the book *The Law Officers of the Crown*, treading the paths that mark the separate roles of the Law Officer requires at times the agility and sure-footedness of a tight-rope walker.

Today in Hong Kong, where we are under the new constitutional order of "One Country Two Systems", the tight-rope walker may sometimes be walking in totally uncharted territory.

However, whatever difficulties there may be, the way forward is clear: an unswerving commitment to the rule of law is the only path to follow. Chief Justice, in relation to that commitment, with your permission, may I thank you and other members of the Judiciary for your very good examples.

Thank you.

Ends/Monday, January 9, 2006

NNNN