

Secretary for Justice's speech at Ceremonial Opening of the Legal Year 2013

Following is the speech by the Secretary for Justice, Mr Rimsky Yuen, SC, at the Ceremonial Opening of the Legal Year 2013 today (January 14):

Chief Justice, Judges and other Members of the Judiciary, Chairman of the Bar Association, President of the Law Society, Distinguished Guests, Ladies and Gentlemen:

First of all, let me extend my warmest welcome to all the guests attending this event, especially those who travelled from the Mainland or overseas jurisdictions. Being an international city, Hong Kong welcomes every opportunity to have exchanges with other jurisdictions.

As I only assumed office on July 1, 2012, this is the first Opening of the Legal Year that I have the privilege to attend as the Secretary for Justice. May I take this opportunity to report on certain recent development as well as to outline the key focuses of my work in the years ahead.

Centre for Legal Service and Dispute Resolution

A combination of factors including our free economy, our status as an international financial centre, our commercial network with other cities and our efficient legal system have placed Hong Kong in a good position to be a leading centre for legal services and dispute resolution in the Asian Pacific Region. Much effort has previously been made in this regard, and I have no doubt that this is a direction that we should continue to pursue.

In September last year, the China International Economic and Trade Arbitration Commission (CIETAC) established the CIETAC Hong Kong Arbitration Centre, which is the very first branch of CIETAC outside the Mainland. The presence of this centre, coupled with the Asia Office of the International Court of Arbitration of the International Chamber of Commerce, reinforces Hong Kong's status as an international arbitration centre.

Enforceability of arbitral award is a highly relevant consideration when parties consider where to arbitrate. Although Hong Kong arbitral awards are already

enforceable in over 140 jurisdictions, we will continue to enlarge the enforcement network. In this regard, I wish to report that any previous doubt concerning the enforceability of Hong Kong arbitral awards in India was removed when the Indian Government declared in March 2012 that the People's Republic of China (including Hong Kong and Macao) is a reciprocating partner for the purposes of enforcement of arbitral awards under the New York Convention. Further, just last Monday, Hong Kong and Macao concluded an Arrangement on Mutual Recognition and Enforcement of Arbitral Awards. This Arrangement will be implemented by way of amendments to the Arbitration Ordinance (Cap. 609), which we plan to introduce within this legislative year.

Last year also witnessed considerable development in the promotion of mediation. The Mediation Ordinance was enacted in June 2012 and came into operation on January 1, 2013. This Ordinance provides the legislative framework for the conduct of mediation in Hong Kong, with emphasis on protecting confidentiality. The Hong Kong Mediation Accreditation Association Ltd., which is an industry-led body incorporated in August 2012 and scheduled to commence operation in around April this year, will be responsible for setting training and accreditation standards as well as addressing disciplinary matters.

The Department of Justice will continue to take an active role in promoting mediation. A new Steering Committee on Mediation has recently been set up, with three sub-committees respectively tasked to monitor regulatory matters, accreditation and training matters as well as public education and publicity. Amongst others, this Steering Committee will monitor the operation of the Mediation Ordinance, the setting of accreditation standards and other matters concerning the future development of mediation.

The promotion of arbitration and mediation will not be confined to the territory of Hong Kong. Together with the relevant stakeholders, we are keeping a close interest in Qianhai and Nansha as well as emerging markets in Asia.

Law Reform

Every system of law has to evolve with the needs of the community it serves. This explains the importance of having a robust system of law reform. In Hong Kong, undoubtedly the Law Reform Commission (LRC) has made great contribution in this regard.

In recent years, concerns have been expressed over the progress of implementation of LRC's recommendations and queries have been raised as to whether our law reform regime requires reform. My predecessor was instrumental in putting in place administrative measures for monitoring the progress of implementing LRC recommendations. I will continue to monitor the situation and will further explore ways to improve the overall situation including the process of research, deliberation and implementation.

As regards implementation, the Contracts (Rights of Third Parties) Bill will be introduced within this legislative year so as to implement the recommendations contained in the LRC Report on Privity of Contract. As regards the LRC Report on Class Action, a Working Group comprising representatives from the relevant sectors has recently been set up to consider the best way forward.

Efforts will also be made to ensure that areas which may deserve reform will be considered by the LRC. In this regard, I would like to announce that the LRC has in its meeting last month decided to establish two sub-committees to consider the topics of archives law and access to information. I appreciate that the Ombudsman has recently also announced an investigation into related issues. The LRC will certainly take into account the result of the Ombudsman's investigation (if not invite their participation) and embark upon a comprehensive comparative study on the relevant laws in overseas jurisdictions with a view to considering whether, and if so, how the law in Hong Kong in this regard should be reformed.

Legal Aid

Effective access to justice is a fundamental part of the rule of law. Substantive legal rights would be of little value if one lacks the means to participate effectively in the justice system. In recent years, there have been calls for reform of our legal aid system. The Legal Aid Services Council is responsible for advising on our legal aid policy including the feasibility and desirability of the establishment of an independent legal aid authority. As I understand, a report will be tendered by the Legal Aid Services Council in due course. Whilst we need to have appropriate strategic planning and to balance competing demands for resources, the Administration is certainly prepared to consider constructive recommendations which can improve our legal aid system. When the report is made available, I would endeavour to work with my colleagues in the Administration to seriously consider

the recommendations with a view to enhancing access to justice for the less privileged sector of our community as much as is practicable.

Law Drafting

Translating policies into legislations has never been an easy task. In Hong Kong, there is the added dimension that both Chinese and English are official languages. Accordingly, in the context of legislative drafting, it is not merely a matter of translating Chinese into English or vice versa. Instead, legislations should be properly drafted in both languages and in as plain a language (whether Chinese or English) as possible, so that it does not require a well-trained lawyer to understand the meaning of our legislations. In last October, we have a very experienced bilingual Law Draftsman joining the Department of Justice. Both of us see the desirability to explore ways to further improve the drafting of bilingual legislations.

As part of the implementation of the Legislation Publication Ordinance (Cap. 614), our Law Drafting Division is pressing ahead with the establishment of an electronic database of all the Hong Kong legislations with legal status. The aim is to provide easy access to legislations with legal status, so as to replace the existing electronic version which does not enjoy any legal status and which is provided for information only. With proper funding, it is expected that the new electronic database can be implemented in around 2016 or 2017.

Prosecution Work

Criminal prosecution is an important part of the work undertaken by the Department of Justice. Article 63 of the Basic Law guarantees that criminal prosecutions should be free from any interference. Our Department will faithfully discharge this role in an independent and fair manner, so as to ensure that in all cases which warrant prosecution, criminals will be brought to justice, irrespective of his or her status or wealth.

It is our goal to provide a modern, progressive, efficient and fair prosecution service so as to uphold the rule of law. The Prosecutions Division has in the past placed and will continue to place emphasis on continuous training and regular seminars. Preparation of training materials, such as the "Criminal Advocacy Course Manual" published last month, provide useful guidance to counsel within and outside our Department in the course of their prosecution work. Apart from

conferences on topics including sentencing and cybercrime, there is the notable example of the Criminal Law Conference held in November last year where local and overseas judges, practitioners and academics gathered to exchange views on areas of criminal law which may deserve reform.

Looking forward, the Heads of Prosecuting Agencies Conference will be held in May this year. There will also be other training courses including one on prosecuting animal cruelty cases. The Prosecution Division will continue to engage in exchanges with prosecution agencies of other jurisdictions to exchange ideas on matters of common interest, as well as to enhance co-operation so as to combat cross-border and transnational crimes and for the restraint and confiscation of proceeds of crime.

To meet the changing needs of our work, we will keep the organisation of our Prosecutions Division under constant review. One initiative we have undertaken is to establish coordinators or specific units for handling specialised types of cases such as cybercrime.

To enhance the general public's understanding of criminal prosecution and the criminal justice system, the programme known as "Prosecution Week" was held for the first time in July last year. Responses from the public were encouraging and we plan to organise similar events on an annual basis.

As the media has reported, the incumbent Director of Public Prosecutions will retire later this year. We are embarking upon an open recruitment exercise, so as to identify a person of utmost integrity and great competence to take up this important role. If I may digress a little bit, I firmly believe that human resources are the most valuable assets of our Department. We are studying measures that can attract the bright and competent graduates and qualified lawyers to join us so as to meet our growing challenges.

The International Dimension

Thus far, I have dealt with matters which are largely domestic in nature. Certainly, we will not lose sight of the need to remain international. To continue Hong Kong's success story, it is of vital importance to ensure that our legal system and legal infrastructure can meet the needs of this globalised age. Last month, the Hague Conference on Private International Law established its Asia Pacific Regional Office in Hong Kong. Attracting similar internationally reputable law-related

organisations to establish offices in Hong Kong is a policy we can ill afford not to pursue. In future, further efforts will be made in the same direction. The recent decision to allocate space in the West Wing of the former Central Government Offices to house such institutions bespeaks the Administration's support of this policy. Further, our International Law Division will continue to foster mutual legal assistance arrangements with other jurisdictions so as to strategically place ourselves in the world map of international legal co-operation.

The Rule of Law

Last but certainly not least, may I briefly deal with certain recent events which have given rise to lively public debates on matters concerning the rule of law. The fact that I address these matters at the end of my speech does not mean that I want to play down their importance. It is because I believe that although controversies certainly deserve our proper attention and management, they should not be allowed to become obstacles preventing us from taking actions that should have been taken in the best interest of Hong Kong.

Let me make this point crystal clear. As the Secretary for Justice, I have every determination to steadfastly uphold the rule of law including judicial independence. Notwithstanding any suggestions to the contrary, there is simply no intention, let alone reason, to take any step to undermine the rule of law or judicial independence as we all agree that the rule of law is one of the key reasons underpinning Hong Kong's success. As a matter of fact, the work plan outlined earlier was prepared with the objective of upholding the rule of law and strengthening our legal system and legal infrastructure.

Whenever legal proceedings would bring about significant social, economic or political impact on our society, it is perfectly understandable that they would give rise to public debates. However, it is an important part of the concept of the rule of law that legal issues should be allowed to be resolved through the judicial system. Accordingly, if we truly respect the rule of law, we should fully respect the legal right of a litigant to have legal issues resolved through the judicial system, irrespective of whether the litigant involved is an individual, a corporation or a government department. Indeed, if there are important legal issues that require resolution, a responsible Government should have the courage and determination to have the legal issue properly adjudicated by the judicial process irrespective of the divergent opinions such a step may generate.

We have a world-class judiciary and true judicial independence. We should have every confidence that cases, however controversial they may be, will be decided by our Judges strictly in accordance with the law and in a fully independent manner. We of course fully respect freedom of speech and people's legal right to express their views. Caution, however, should be exercised so that Judges can decide cases in an environment free from undue interference or pressure of whatever form. Unlike the political process, the judicial process is not subject to any lobbying and should not be so.

There is no doubt that we are facing challenges in one form or other. Like time, challenges wait for no man. However, courage, determination and faith in our legal system would enable us to overcome challenges (unprecedented or otherwise) and find appropriate solutions that will best serve the interest of Hong Kong as a whole.

It remains for me to wish all of you a happy and prosperous year of 2013.

Ends/Monday, January 14, 2013