

**Speech by the Hon Rimsky Yuen, SC, JP,  
Secretary for Justice  
at the Ceremonial Opening of the Legal Year 2014  
on 13 January 2014**

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

1. Once again, we gather here to usher in the new legal year. On behalf of the Department of Justice, may I extend our warmest welcome to all the guests attending this event, especially those who travelled from other jurisdictions.
2. Ceremonial though it may appear, the Opening of the Legal Year is part of a long established tradition adopted in many common law jurisdictions. In the context of Hong Kong, which is the only common law jurisdiction in the Greater China region, the Opening of the Legal Year has unique significance as it signifies the lively continuation of the common law tradition in Hong Kong under the “One Country, Two Systems” principle. Needless to say, it is also an appropriate occasion to reflect on the past and to look ahead.

**Judicial Independence**

3. Let me begin with the rule of law, which is well recognized as one of our core values. In any civilized society, the rule of law ensures that the government will not act in excess of its legal power. On the part of the Department of Justice, we would endeavour to do our utmost to maintain and uphold the rule of law in Hong Kong.
4. Whilst it is of great importance for the Administration to do its part, it is equally crucial that other sectors of the community, and indeed the whole community, should respect the rule of law and refrain from conduct which would jeopardize the rule of law. In a cosmopolitan society like Hong Kong, it is perfectly natural that there would be very different opinions and demands. People would

express their views and make their demands in many different ways. That is why it is important to have the freedom of expression and the other fundamental rights guaranteed under the Basic Law. However, a true respect for the rule of law means that not only the Government, but the community as a whole and every member of the community, should also respect the rule of law and exercise their rights within the boundary permitted by the law. Deliberate attempts to act in breach of the law, even for causes which may sound noble, should not be encouraged.

5. One important aspect of the rule of law is judicial independence, which is firmly guaranteed under Article 85 of the Basic Law.
6. Judges do not decide what cases would go before the courts. As and when cases are properly commenced pursuant to the relevant legal procedure and irrespective of whether they are controversial or otherwise, our judges have no choice but are obliged to adjudicate the cases according to the applicable law and the available evidence.
7. Controversial decisions, such as cases concerning the rights guaranteed under the Basic Law or those concerning environmental protection, often attracted media attention or even generated heated discussion. This is totally understandable. The freedom of the press and the freedom of expression must allow appropriate and good faith discussion of decisions made by judges. As Lord Atkin once remarked<sup>1</sup>, “*Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and the respectful even though outspoken comments of ordinary men.*”
8. However, appropriate discussion or even criticism of judicial decisions is one thing, abusive attacks and unwarranted conduct which would undermine the independence of the judiciary and public confidence in the administration of justice are totally different. As Sir Anthony Mason observed<sup>2</sup> the courts “*should not be made a target of irresponsible criticism. Public confidence, which is vital to the well-being of the administration of justice, once lost or damaged, is not easily restored.*”

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<sup>1</sup> See *Ambard v AG for Trinidad and Tobago* [1936] AC 322.

<sup>2</sup> See Geoffrey Lindell (ed.), *The Mason Papers*, (The Federation Press) (2007), at p. 99.

9. Similarly, Sir Sydney Kentridge QC, pointed out as follows<sup>3</sup>:

*“ ... .. Independence here means more than independence from government direction. It means also that judges in making their decisions should as far as humanly possible not be influenced by public opinion, or by any sense of obligation to the government or to any individual, party, or pressure group. There is a particular threat to judicial independence which should concern us: that is, the growing tendency for politicians and the press to attack in intemperate and even vituperative terms judges who have given decisions with which they disagree.*

*Judges, it has also been said, must have broad backs, and usually they have. The real mischief of unwarranted attacks on the motives and integrity of the judges, however, is not any hurt to the judge’s feelings; it is that they undermine that respect for the judiciary without which, ... .. the foundations of the rule of law are undermined.”*

10. Amidst the usually healthy discussion of judicial decisions and judges we had during the past year, one sign of concern is the emergence of abusive attacks. Some have even indicated that they would compile a list of judges whom they considered politically biased and would request their removal. However well-intended their subjective motives might be, such conduct should not be encouraged. As pointed out by the then Chief Justice Andrew Li in his speech delivered at the Opening of the Legal Year in January 2000, when the courts come under unwarranted attack, it is the constitutional responsibility of the Government to explain and defend the fundamental principle of judicial independence. The Department of Justice would have no hesitation to take such steps as may be necessary to defend judicial independence.

### **Law Reform**

11. Apart from attracting discussion, controversial cases may provide momentum for law reform. The case of *W v The Registrar of Marriages* [2013] 3 HKLRD 90, where the Court of Final Appeal

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<sup>3</sup> See Sydney Kentridge QC, *Free Country: Selected Lectures and Talks* (Oxford & Portland, Oregon) (2012), at pp. 155-156.

(“CFA”) had to deal with the right to marry of transsexual persons, is a good example. Apart from introducing amendments to the Marriage Ordinance and the Matrimonial Causes Ordinance<sup>4</sup> so as to rectify the unconstitutional aspects of the current regime, an inter-departmental working group to be chaired by me is in the process of being set up to conduct a comprehensive review on our law concerning gender recognition. The key objective of this working group is to consider the introduction of appropriate legislation to protect the legal rights of transsexual persons.

12. Law reform, as I mentioned on other occasions, plays an important role in maintaining the rule of law. We live in a fast-changing age. As our society evolves, our laws have to change so as to meet the changing needs of our society. To this end, the Law Reform Commission has taken on four new projects in the past year. They concern: (1) archives law; (2) access to information; (3) excepted offences under Schedule 3 to the Criminal Procedure Ordinance; and (4) third party funding for arbitration. With a view to enhancing interest in law reform, we recently launched the first Law Reform Essay Competition. Law students are invited to submit essays on a specified topic, namely, “Should pre-nuptial agreements be recognized and enforceable in Hong Kong?”

### **Criminal Prosecution**

13. Another important aspect of our work is criminal prosecutions. To ensure that our prosecution policy is up-to-date, the Prosecutions Division has embarked on a comprehensive review of the previous Statement of Prosecution Policy and Practice, and released a new Prosecution Code, which took into account the latest developments of criminal jurisprudence and international trends. Further, in order to keep abreast of developments in other jurisdictions and to consider how our criminal justice system can be improved, various seminars and conferences were held during the past year. Examples include the 12<sup>th</sup> Heads of Prosecuting Agencies Conference and the seminar entitled “The Debates: Criminal Justice Reform”.
14. During the year, we have lost our most important member of the

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<sup>4</sup> The proposed Bill will textually amend the Marriage Ordinance and the amendments will also apply to the construction of the relevant provisions in the Matrimonial Causes Ordinance.

prosecutions team to the Judiciary, who is now the Hon. Mr. Justice Zervos. That said, I am confident that our Prosecutions Division, under the leadership of our new Director of Public Prosecutions, Mr. Keith Yeung, SC, will continue to discharge its duties by providing a prosecution service which is independent, professional and fair.

### **Centre for International Legal and Dispute Resolution Services**

15. Last year, I said Hong Kong is well placed to be a leading centre for legal and dispute resolution services in the Asia Pacific region. This remains the case, and the Department of Justice would continue with its efforts to enhance Hong Kong's strength in this regard. Indeed, during the past year, I and my colleagues have attended numerous events within and outside Hong Kong (including places like Beijing, Xiamen, The Hague, London, Macau and Seoul) to promote Hong Kong's legal and dispute resolution services.
16. As regards the plan for the future, may I highlight the following new initiatives.
17. First, upon our invitation, the China Maritime Arbitration Commission has agreed to set up a branch organization in Hong Kong. My colleagues are following up on the logistical details and we believe the branch would soon come to fruition. This move, we believe, would enhance Hong Kong's competitiveness in the field of international maritime arbitration.
18. Second, as reflected by the figures released by the United Nations and other bodies, international investment arbitration is getting more and more popular. With its headquarters in the Hague, the Permanent Court of Arbitration ("PCA") is a leading international institution with a long history and good reputation in this field. At our request, the Central People's Government and the PCA have commenced negotiation of a host country agreement on the conduct of dispute settlement proceedings in Hong Kong. The negotiation is making good progress, and I look forward to its finalization in the near future so that more investment arbitrations would be conducted in Hong Kong.
19. Third, as you may recall, the Government announced in December 2012 that it would allocate certain office space in the West Wing of

the former Central Government Offices to legal and dispute resolution institutions (especially international or overseas institutions). As a follow up of this policy, I am pleased to announce that the Department of Justice will take over the former French Mission Building upon the relocation of the Court of Final Appeal to No. 8 Jackson Road, with a view to increasing the space that can be provided to legal and dispute resolution institutions. This will fit in well with the former Central Government Offices being used as the future home for the Department of Justice and law-related organizations, as well as enabling the whole area to become the future “legal hub” of Hong Kong.

20. Fourth, with a view to enhancing better co-ordination and strategic planning for the development of international arbitration, a new advisory committee on the promotion of arbitration comprising representatives of the key stakeholders will soon be established. With this new committee, it is hoped that the development of arbitration would be taken to a new height.

### **Constitutional Development**

21. One last area that I would like to cover is constitutional development. On 4 December last year, the Administration formally launched the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016. As the Secretary for Justice, I am honoured to have the opportunity to take part in this important constitutional development. The Administration is firmly committed to forging consensus within the community on this important matter, and I urge members of the legal community to make positive contributions in this historical exercise.
22. On this note, may I wish all of you and your families a happy and prosperous year of 2014. Thank you.