

Judicial independence is of fundamental importance to Hong Kong

\*\*\*\*\*

In response to media enquiries concerning recent comments made by certain sectors of the public in respect of the Judiciary, a spokesman for the Department of Justice responded as follows this evening (March 30):

1. Judicial independence is of fundamental importance to Hong Kong. Judges only decide cases according to the relevant evidence and the applicable law.

2. The spokesman repeated the following remarks made by the Secretary for Justice at the Ceremonial Opening of the Legal Year 2014 on January 13, 2014 (paragraphs seven to nine):

"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 (Note 1), 'Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and the respectful even though outspoken comments of ordinary men.'

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 (Note 2) 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.'

Similarly, Sir Sydney Kentridge, QC, pointed out as

follows (Note 3):

'... 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.'

3. The Secretary for Justice invited the community to take note of the above position and not to take any step which may constitute contempt of court or other criminal offences, or otherwise may prejudice judicial independence. Where necessary, the Department of Justice will not hesitate to take appropriate actions.

Note 1: See *Ambard v AG for Trinidad and Tobago* [1936] AC 322.

Note 2: See Geoffrey Lindell (ed.), "The Mason Papers", (The Federation Press) (2007), at p. 99.

Note 3: See Sydney Kentridge, QC, "Free Country: Selected Lectures and Talks" (Oxford & Portland, Oregon) (2012), at pp. 155-156.

Ends/Monday, March 30, 2015