

Speech by Secretary for Justice at opening ceremony of  
Prosecution Week 2017 (English only)

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Following is the speech by the Secretary for Justice, Mr Rimsky Yuen, SC, at the opening ceremony of Prosecution Week 2017 today (June 23):

Chairman of the Bar Association, Vice-President of the Law Society, colleagues from other government departments and from law enforcement agencies, distinguished guests, ladies and gentlemen,

First of all, thank you for joining us at this opening ceremony of the Prosecution Week 2017. On behalf of the Department of Justice (DoJ), may I extend to all of you our warmest welcome.

Since its inception, the purpose of organising Prosecution Week is to engage the general public, so as to enhance a better understanding of the criminal justice system. This year, as pointed out by the Director of Public Prosecutions (DPP) just now, the theme chosen is "The Rule of Law". The DPP has already made powerful observations about the rule of law in the context of administration of criminal justice. On my part, if I may just add a few observations.

Pursuant to the "one country, two systems" policy, the Hong Kong Special Administrative Region (HKSAR) continues to maintain the common law legal system. This is achieved, among others, by Article 8 of the Basic Law. One of the inherent and most fundamental spirits of the common law is the rule of law.

Insofar as the administration of criminal justice is concerned, various provisions in the Basic Law are of relevance. Key examples include Article 25, which provides that all Hong Kong residents are equal before the law. There

are also Articles 28 and 29, which respectively prohibit arbitrary or unlawful arrest, detention, imprisonment as well as arbitrary or unlawful search of, or intrusion into, a Hong Kong resident's home or other premises. No less important is Article 35, which guarantees, among others, the right to confidential legal advice and choice of lawyers for protection of lawful rights. Further, Article 86 preserves the system of trial by jury, whilst Article 87 guarantees the right to a fair trial by the courts and shall be presumed innocent until duly convicted.

These provisions, together with Article 63 as highlighted by the DPP and those provisions concerning judicial independence, and plus the protection enshrined in the Hong Kong Bill of Rights and the common law, constitute the overall framework within which our criminal justice system operates. Not only does it provide the constitutional and legal guarantee of a person's rights, this framework reflects the very key concepts of the rule of law which are relevant to the administration of criminal justice in Hong Kong, and which are the very key concepts jealously safeguarded by the DoJ.

Operating within this framework are the key players, namely, the law enforcement agencies, the prosecutors, the legal profession and the Judiciary. In this regard, it is important to bear in mind that they have different roles to play, and that they perform different functions. A failure to appreciate their respective roles and functions may lead to misunderstandings as to why a certain course of action is or is not taken in any given case.

Unlike the law enforcement agencies, prosecutors do not investigate crime and are not supposed to do so. Unlike judges, prosecutors have no power to determine the criminal liability of defendants. Instead, prosecutors' role is mainly three-fold: (1) as and when necessary, they provide legal advice to law enforcement agencies during their

criminal investigation; (2) upon completion of investigation, they have to decide whether to commence prosecution; and (3) if prosecution is commenced, they present the case before the court.

Further, as I have mentioned before, and if I may again repeat the point, the law, for good reasons, prescribes different standards to be applied during the three main stages of the criminal justice process. In particular, it is important to bear in mind that the test for commencing prosecution is whether the available evidence demonstrates a "reasonable prospect of conviction", and if so, whether it is in the public interest to prosecute. On the other hand, defendants would only be convicted if the courts take the view that the criminal charges are proved beyond reasonable doubt, a standard which is considerably higher than the threshold adopted for deciding whether prosecution should be commenced.

From time to time, some people sought to gauge prosecutions' performance by looking at conviction rates. Such an approach, with respect, is not at all helpful. As explained just now, the standards adopted for commencing prosecution and for convicting a defendant are different. In particular, in cases where the courts ruled that the defendants have a case to answer, which means that the courts agree that there is a prima facie case against the defendant, the prosecution can hardly be criticised for commencing the prosecution, irrespective of whether the defendant is convicted or acquitted at the end of the day.

Under our system, as in other common law jurisdictions, the duty of the prosecutions is to present evidence in a fair and professional manner before the court, so that the court is in a position to decide the question of guilt or innocence. It is not the duty of the prosecutions to secure convictions at all costs. In a criminal case, the question of fairness is relevant to both the victim of crime as well as the accused.

Prosecutors are not investment managers. Their performance should not be judged by reference to rate of returns. Nor should conviction rates be viewed as GDP, such that the higher the conviction rate, the better the prosecutorial system. Justice should not be just measured by figures, but should be by reference to whether the law is adhered to, whether the evidence is fairly presented, and whether the victim and the accused are fairly treated and their rights duly protected.

In about a week's time, I would have been with the DoJ for five years. During this period, I have had the privilege to witness the professionalism and integrity of our prosecutors, as well as the leadership of the previous and incumbent DPPs. I would like to express my gratitude to all the colleagues in the Prosecutions Division for their dedication and contribution. Despite the fact that they from time to time face considerable pressure, including undue criticisms or even personal abuses which are wholly unjustified, the colleagues in the Prosecutions Division have at all times endeavoured to uphold the rule of law.

In addition, I am deeply indebted to colleagues from the Prosecutions Division for organising this annual event of Prosecution Week and the year-round Meet the Community Programme. The time and hard work they put into these activities, which are on top of their already busy and hectic prosecution works, illustrates beyond reasonable doubt, not just on balance of probabilities, their strong passion in upholding the rule of law. Of course, I also thank the schools and students who participate in these programmes.

In addition, I am most grateful to the support and assistance rendered by the Bar Association, the Law Society, as well as our colleagues in other government departments and in the various law enforcement agencies, whether in respect of this Prosecution Week or generally. The criminal

justice system cannot operate smoothly and robustly unless all the stakeholders join hands and co-operate. The DOJ looks forward to working closely with all the stakeholders, so that the public can be best served, and so that public interests can be protected.

On this note, it remains for me to formally declare the commencement of the Prosecution Week 2017.

Thank you.

Ends/Friday, June 23, 2017