

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 2007 today (January 8):

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

10th anniversary of the reunification

On July 1 this year, we shall be celebrating the 10th anniversary of the reunification. The world no longer questions whether "One Country, Two Systems" is workable. The challenge today is how to make it work even better, not only for Hong Kong, but also for the Mainland.

Of course we must work hard to secure the integrity of our system. However, it is equally important for Hong Kong and the Mainland to keep developing more understanding of each other's system, wider cooperation on matters of common principles and interests, and greater respect and tolerance for the differences.

The past year has seen significant milestones in such collaboration in the legal field. In June last year, the third supplement to CEPA was concluded, providing two breakthroughs in the expansion of legal services on the Mainland. First, Hong Kong lawyers who have qualified as Mainland practitioners upon passing the State Judicial Examination, and hold a Mainland lawyer's practising certificate, will be able to provide litigation services in matrimonial and succession cases relating to Hong Kong. Second, Hong Kong barristers will be able to act as agents in civil litigation cases on the Mainland in their capacity as citizens.

On July 14 last year, we signed an important Arrangement with the Supreme People's Court of the Mainland for the reciprocal enforcement of certain commercial judgments by the Mainland and Hong Kong courts. It will provide local and international business communities in Hong Kong, as well as on the Mainland, with an option to seek enforcement of certain commercial judgments in a more summary fashion. The relevant bill will be introduced into the Legislative Council soon and the Supreme People's Court is preparing the necessary Mainland guidelines. This arrangement, we hope, is just the prototype of others to come.

Standing on the giant's shoulders

Developments such as these present new challenges to lawyers in Hong Kong. "If I have seen further it is by standing on the shoulders of giants." These words of Isaac Newton back in 1675 are apt to describe the position of Hong Kong lawyers in 2007.

Hong Kong and Hong Kong lawyers indeed have long been riding on the rapid growth of the giant Mainland economy. However, the giant certainly also sees the advantage of the more mature legal environment of Hong Kong. Our Stock Exchange

is chosen by many Mainland mega banks and enterprises as the first place of flotation. Hong Kong's law and corporate governance are exerting unprecedented influence on the Mainland's financial market. Hong Kong lawyers can and do contribute to the success, not only of the economic explosion of the Mainland, but also to the development of her rule of law.

How far can we see now? How far are we prepared to go? Now that we have persuaded the Ministry of Justice to hold the State Judicial Examination in Hong Kong, I would encourage Hong Kong lawyers to study for this examination in order to take advantage of the opportunities now made available under CEPA. In 2006, 158 Hong Kong candidates completed the examination and eight passed it. I hope that, with the further liberalisation measures, there will be more Hong Kong candidates and more successful ones.

And now that appearance in the Mainland courts is permitted, I would encourage Hong Kong barristers to make the strategic move by providing their services as citizens' agents, and to demonstrate in the Mainland courts the advocacy skills which we pride ourselves on.

It is important to bear in mind that CEPA is meant for mutual benefit. Five years have passed since China joined the WTO. A large volume of legislation is under way on the Mainland. Hong Kong stands ready to share our experience and expertise with the Mainland in these new areas of enactments. The Mainland and her legal profession do look to us in Hong Kong as a bridge to help them step into the international market.

My department aims to deepen the cooperation with our counterparts in eight cities or regions, pursuant to existing agreements to promote understanding of each other's system at the practical level such as lawyers exchange programmes. And later this week we shall be expanding my department's BLIS website to include a dedicated webpage containing the texts of the major intra-country arrangements between the Hong Kong SAR on the one part and the Mainland or the Macau SAR, as the case may be, on the other part. We hope this will help both the legal profession and the general public to gain knowledge and understanding of the range of cooperative work between Hong Kong and other parts of China.

The international link

Hong Kong's success lies in being both a Chinese and an international city. We are an integral part of China speaking the same language. We are also an international city enjoying a totally distinct common law system.

It is vital to maintain our international link, so as to share, preserve and enhance the core values of our legal system. One example of our efforts in this respect is the holding in September this year of the Annual Conference of International Association of Prosecutors. The conference will be attended by some 500 prosecutors from over 100 jurisdictions.

And shortly we shall commence consultation to ascertain the level of local support for the Hague Convention on Choice of Court Agreements, which will enable litigants

to enforce judgments obtained in the court of one state party, on the basis of a choice of court agreement, in the courts of other state parties.

Regional centre for dispute resolution

These and other developments vis-a-vis the Mainland mentioned earlier will add to Hong Kong's attractiveness as an international dispute resolution centre.

Hong Kong hosted the Asia Pacific Regional Arbitration Group Conference last month, which highlighted our status as a leader in international commercial arbitrations. The Government supports the Hong Kong International Arbitration Centre (HKIAC) by providing premises for it and my department works closely with the HKIAC in promoting Hong Kong as a regional arbitration centre. It is very encouraging to see the HKIAC taking initiatives such as the adoption of institutionalised rules for arbitration to assist the ever increasing number of Mainland companies choosing to arbitrate in Hong Kong, and the pioneering services in resolving domain name disputes in Asia.

Another ongoing effort is the reform in Hong Kong's arbitration law. The working group established in 2005 to take forward the proposal to apply UNCITRAL Model Law to all types of arbitration is expected to publish a consultation paper and draft bill this year.

Mediation

The Judiciary has taken new initiatives on mediation. To develop mediation in Hong Kong, more concerted efforts need be made in terms of streamlining training, accreditation, professionalism and promoting public awareness. One must be able to effectively demonstrate the merits of mediation before the public will accept it as a real alternative.

To this end, the Department of Justice has taken the initiative to group together representatives of local mediators, the legal profession and other interested parties to discuss how we can take mediation forward in Hong Kong.

I have no doubt that, for the higher-end commercial disputes, the efficacy of mediation will generate its own market in due course. What I am particularly interested to see, however, is whether "community mediation" can provide an effective alternative in smaller disputes among citizens in Hong Kong.

Over the past few months, different groups have tried to enlist my support to set up specialist courts and tribunals, which they believe to be the key to resolving disputes such as those arising from building management. However, access to justice should not be equated with merely access to the courts. It may not be cost-effective or proportionate to try to channel relatively small disputes to the courts, or even to tribunals.

Mediation, effectively conducted, can provide a relatively quick and inexpensive procedure, producing a satisfactory and amicable result, which both parties actively worked at and can live with, and which will not destroy an existing relationship.

In connection with developing ADR, we all look forward to receiving the report of the consultants' social-legal study on the supply and demand of legal services in Hong Kong later on this year. The study, which was commissioned by the Department of Justice, will provide useful data for planning the way forward and to fill any gap in the provision of legal services in Hong Kong.

Public service in the law

As the Chief Justice mentioned in his speech last year, more and more people are turning to the Courts to resolve political, economic and social problems. The Judiciary is not the only one to feel the impact. The Department of Justice is often in the front line.

Since the reunification, we have entered a new era where fundamental human rights and freedoms are protected constitutionally by the Basic Law. Controversies and criticisms are inevitable as we chart on unknown waters. The increase in public law cases provides the best testimony of the breadth and effectiveness of the protection conferred by the Basic Law. How to strike the proper balance between competing needs and public interests is the ultimate challenge for both the Government and the Courts. It calls for an uncompromising attitude on matters of principles, unbiased insight into the circumstances, and an unwavering determination to do the best for the community. In the past year, there have been controversies and judicial challenges surrounding Government actions. However, what is beyond question is the commitment of the Government to upholding the rule of law in Hong Kong.

We at the Department of Justice have been working hard to see how we can improve our work system and efficiency, and better our utilisation and allocation of resources, within the present establishment and in compliance with the Government's current policy to control the size of the civil service. We will not allow quality to be compromised. Instead, we are rising to the challenges by complying with the most stringent procedural and disclosure requirements based on human rights and other safeguards.

Recently I was deeply touched by some colleagues sharing their aspirations and convictions through local newspaper columns. Some chose their careers as public prosecutors for the sake of defending justice. Others preferred their work as government counsel to protect the public interest rather than the private interests of a few individuals and companies. While Basic Law disputes may sound depressing to many, it is refreshing to hear that colleagues handling our constitutional law rejoiced in having opportunities to learn, and to utilise their expertise and labour to the benefit of the community.

To my colleagues of the Department of Justice, I would like to express my heartfelt gratitude. And I urge you all to continue to serve the community with pride, conviction and professional excellence.

Mr Philip Dykes, SC, Chairman of the Bar, has recently written to us raising the old issue of lay court prosecutors. On this matter, the overriding consideration must

be the public interest. The quality of criminal justice is of course a paramount consideration. However, there is no evidence that it is being compromised by the use of court prosecutors. Our court prosecutors are well-trained and experienced. Many of them are fully legally qualified. They are also subject to a full range of disciplinary sanctions should any of them act improperly in the discharge of professional conduct. They are currently playing an important role in our criminal justice system, which should be recognised. As someone coming from the private Bar, I am very conscious of the public interest in nurturing a strong and independent Bar. My department will play its part by giving young barristers opportunities to prosecute on fiat. However, the cost of briefing out and the quality of service are matters of public interest which we cannot ignore.

Conclusion – still on the rule of law

The rule of law is the defining ideology of Hong Kong. We need to guard it jealously at all levels. The courts, the Government and the lawyers of course have special roles to play. However, the rule of law will be a dead letter if the community at large is not equally committed to upholding it.

An important way to safeguard our fundamental rights and freedoms is to exercise them responsibly and in accordance with the law. One must accept the supremacy of the law, which entails compliance with the laws in force, including those one might find disagreeable, unfavourable or inconvenient. A robust legal system is the foundation for a harmonious society, and the recognition of, and commitment to, the rule of law by both the public and the government is the central pillar of such a society.

I shall end with a word of wisdom given to me by a senior lawyer, when I asked him what advice he would give me as the new Secretary for Justice. He said this: "Do your best not just to make the law something to be feared and obeyed, make the rule of law something that people, including those who have just come into contact with it, will find it necessary to nurture and to have."

To that end, I am sure we shall all try our very best. Thank you and I wish all good health and good spirits in the New Year.

Ends/Monday, January 8, 2007

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