

Speech by Secretary for Justice at Ceremonial Opening of the Legal Year 2008

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Ceremonial Opening of the Legal Year 2008 today (January 14):

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

May I first of all welcome all our guests from overseas and the Mainland coming specially for this ceremony of the Opening of the Legal Year.

Introduction

In two weeks time, one of the oldest and largest law firms in Hong Kong will be merging with a leading US law firm to become a mega legal services provider in the Asia Pacific region. The world is indeed becoming flatter. In globalizing legal services, the strategic position of Hong Kong needs little elaboration.

International arbitration

In his Policy Address in October last year, the Chief Executive reiterated the importance of a sound judicial system and comprehensive legal services for dispute resolution to an international financial centre like Hong Kong.

In this connection, the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill for public consultation was published by my department on December 31 last year. We propose the creation of a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration, thereby abolishing the distinction between domestic and international arbitrations under the current Arbitration Ordinance. We believe the reform will make Hong Kong arbitration law more user-friendly and further strengthen our appeal as a prime jurisdiction for arbitration.

In the past year, we have worked closely with the Hong Kong International Arbitration Centre ("HKIAC") to discuss how the Government can best facilitate the development of international arbitration. We have also been in touch with leading international arbitration bodies such as the International Court of Arbitration of the International Chamber of Commerce, the Arbitration

Institute of the Stockholm Chamber of Commerce and the China International Economic and Trade Arbitration Commission ("CIETAC") to explore the prospect of their establishing a presence in Hong Kong.

Following my visit to Beijing in September last year, we have been pleased to receive confirmation from the Supreme People's Court that the arrangements for reciprocal enforcement of arbitral awards between Hong Kong and the Mainland are not confined to awards made under the auspices of arbitration institutions such as the HKIAC, but include awards made following ad hoc arbitrations in Hong Kong.

Other developments on globalization

Hong Kong has always been an international city. My department works closely with the international community in mutual legal assistance, anti-terrorism and anti-money laundering endeavours. Colleagues from my department were enlisted to participate in the mutual evaluation of Mongolia at the end of 2006 and Indonesia in 2007, as part of Evaluation Programme of the Asia/Pacific Group on Money Laundering.

In September last year, we hosted the Annual Conference of the International Association of Prosecutors attended by prosecutors from close to 100 jurisdictions. The election of our Director of Public Prosecutions, Mr Grenville Cross SC, as a member of the Executive Committee of the Association is a recognition of the high quality of our prosecution service and we will use that seat to enhance global anti-crime strategies and to promote more effective prosecutions.

My department's capacity on law drafting will be enhanced by the recruitment of a new Law Draftsman of top international standing. Mr Eamonn Moran QC, formerly the Chief Parliamentary Counsel of the State of Victoria in Australia with 32 years of legislative drafting experience, and the newly elected President of the Commonwealth Association of Legislative Counsel, will be joining us in a week's time.

Interface and Cooperation with the Mainland

Regarding legal cooperation with the Mainland, the Mainland Judgments (Reciprocal Enforcement) Bill had its first reading in the Legislative Council in March last year. When enacted, it will provide local and international business communities in Hong Kong as well as those in the Mainland with the option to seek enforcement of the applicable commercial judgments in a more summary fashion.

Apart from pushing the bounds of CEPA and facilitating Hong Kong lawyers to take part in the State Judicial Examination to gain Mainland qualifications, my Department has been running the Common Law Training Scheme for Mainland Officials since 1999. Over the past 8 years, a total of 101 mainland officials from central, provincial and municipal levels have completed post-graduate courses in common law at the University of Hong Kong and a short placement in my and other law-related departments. We are currently expanding the scheme. Agreement has been reached with the relevant authorities to take in a similar course at the Chinese University.

Other changes in the legal landscape

Globalization and the rise of China are not the only causes for the rapid changes in the legal landscape.

Like the overseas experts who shared their experience with us in the Mediation Conference held last November, we too recognize that the conventional processes for resolving disputes are overloaded despite the development of the judicial institution and the growth in the size of the legal profession. Although we are increasing resources and simplifying procedures, the court process can still be lengthy, costly, antagonistic, and uncertain, and can lead to dissatisfaction with the legal process.

As announced by the Chief Executive in his Policy Address, my department will lead a cross-sector Working Group to map out how we can move mediation forward in Hong Kong. I am looking forward to chairing our first meeting early next month. Issues to be discussed will include how to educate the the commercial sector and the public at large on what mediation is and what benefits it can bring, how to streamline the quality and qualifications of mediators, and whether judicial compulsion or legislation is required in its promotion. Pilot schemes in specific fields are being implemented and considered by the Judiciary. They will help answer difficult questions such as the role of the judge in the mediation process and mediation confidentiality.

The report of the Working Party set up to consider the extension of the existing rights of audience enjoyed by solicitors was endorsed by the Chief Justice and passed to my department. We are now studying what legislation is necessary to implement the recommendations of the Working Party and hope to be able to make legislative proposals during the 2008-2009 legislative session.

What cannot be compromised

Amidst these and other changes, one has to be vigilant not to compromise on the essential whilst moving into new paradigms. Quality must not be sacrificed. In promoting mediation for its speed, flexibility and cost-effectiveness, justice and legal principles must not be effaced. In enlarging the pool of advocates, the high standard of advocacy before the courts must still be insisted upon. The surest way to meet new challenges and competition is to upgrade one's own professional expertise and services by specialization or diversification. In this connection, the report on the Consultancy Study on the Demand for and Supply of Legal and Related Services will be published shortly and no doubt will provide much needed empirical data for considering the way forward.

For all of us working in the administration of public justice, there are more anchors which must not be moved. Public interest must be the paramount consideration and the rule of law must be vigorously upheld. When we speak of the "rule of law" as the foundation of our system, we mean not only that no man is above the law, but that every man, whatever his rank or position, be it the Chief Executive or the average citizen, is subject to the ordinary law and amendable to the jurisdiction of the courts.

The Law Reform Commission continues to identify areas in our legal framework calling for review and improvement. Among the papers published last year is the important report on Conditional Fees. A new project which has already attracted considerable public attention is the review of the law and regulatory framework relating to charities in Hong Kong.

Two recent decisions touching on the proper consideration of public interest are worth highlighting here. Firstly, in connection with costs orders in judicial review applications, the court emphasized that whether the proceedings were brought to advance public interest cannot be dictated by the applicant's own perception of public interest. The question has to be assessed objectively and the relevant interest is the interest of the community as a whole (Note 1).

Secondly, the Court of Final Appeal confirmed that the correct test for granting leave for judicial review is whether an arguable case for relief has been shown, not the lower threshold of potential arguability (Note 2). The Court went on to explain that "[w]hilst in a society governed by the rule of law, it is of fundamental importance for citizens to have access to the courts to challenge decisions made by public authorities on judicial review, the public interest in good public administration requires that public authorities should not have to face uncertainty as to the validity of their decisions as a result of unarguable claims. Nor should third parties affected by their decisions face such uncertainty." (Note 3)

Conclusion

"The world today is undergoing extensive and profound changes, and contemporary China is going through a wide-ranging and deep-seated transformation. This brings us unprecedented opportunities as well as unprecedented challenges, with the former out-weighting the latter." The optimism expressed by President Hu Jintao in this statement last October is re-assuring. Projecting that into the legal context here in Hong Kong, by holding firmly to our strong tradition in and commitment to the rule of law, coupled with open-mindedness, goodwill and cooperation from all sides under the innovative concept of "One Country, Two Systems", I am convinced that Hong Kong can turn more challenges into opportunities, not only for ourselves but also for our country. I wish you all a happy and fruitful new year.

Note 1: *Chu Hoi Dick & another v Secretary for Home Affairs*, HCAL 87 of 2007, 6 September 2007, para.26

Note 2: *Peter Po Fun Chan v Winnie CW Cheng and another*, FACV No.10 of 2007, 30 November 2007

Note 3: Para.14 of Judgment

Ends/Monday, January 14, 2008