

SJ's speech at the farewell sitting for CJ

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the farewell sitting for the Hon Chief Justice Andrew Kwok-nang Li at the Court of Final Appeal this morning (July 16):

Chief Justice, my lords and my ladies, other honourable members of the Judiciary, Chairman of the Bar, President of the Law Society, ladies and gentlemen:

Introduction : The historic role of the first CJ

Chief Justice, when your decision to take early retirement was announced last September, although everyone regretted your early departure from the bench, the applause for your outstanding achievement over your 13 years of tenure was in complete accord. You were praised by both the local and the overseas press. And the standing ovation after your speech at this year's opening of the legal year was a moving testimony to the respect you command in this community.

It has been said the role of a judge is to bring about the realisation of the rule of law. As the first Chief Justice of the Hong Kong Special Administrative Region, you have shouldered the monumental task of bringing about the legal realisation of the innovative "One Country, Two Systems" principle. And 13 years on, the verdict is unanimous: The mission has been accomplished with resounding success.

In discharging its constitutional powers and functions, the Court of Final Appeal is entrusted by the Basic Law with the interpretation and application by a common law court of Chinese national law developed under the Mainland legal tradition and adopted by the National People's Congress. The Court has approached its task with admirable skill and professionalism.

You have made the new constitutional order work and work convincingly for Hong Kong, despite initial doubts and challenges. You have been steadfast in defence of the core values of judicial independence and fundamental rights and freedoms, at a time of rising awareness of such rights and a corresponding surge in litigation cases posing questions of profound complexity and consequence. You have demonstrated great wisdom and judicial balance, earning full trust and confidence, not just among us in Hong Kong but also among the international community.

Your passage along this unprecedented road, as the Hong

Kong Special Administrative Region's first Chief Justice, has been one of truly historic proportions.

Laying the foundations of constitutional jurisprudence

The road has not been easy. From the outset, in the landmark case *Ng Ka Ling v Director of Immigration*, the Court of Final Appeal firmly established the constitutional jurisdiction of the Hong Kong Special Administrative Region's courts. The Court held that a purposive approach to the interpretation of the Basic Law is appropriate, that a literal, technical, narrow or rigid approach must be avoided and a generous interpretation should be given to the provisions of the Basic Law which contain "the constitutional guarantees for the freedoms that lie at the heart of Hong Kong's separate system".

In *Director of Immigration v Chong Fung Yuen*, giving the judgment of the Court, you held that the courts in Hong Kong are bound to apply the common law in exercising their power of interpretation, but that when the Standing Committee of the National People's Congress has made an interpretation of the Basic Law, the courts in Hong Kong are under a duty to follow it.

The Court also refined the purposive approach to the interpretation of the Basic Law, concluding that if the meaning of the language is clear, the courts are bound to give effect to that meaning.

These were difficult early days for the Court of Final Appeal and for the Hong Kong SAR, but we saw in you the demonstration of true fortitude of the most valuable kind, an unyielding commitment to do what is right and fair according to the law and the inner strength to maintain your clarity of purpose, thought and judgment.

A human rights court

With the constitutional entrenchment of major human rights conventions in Hong Kong, the Court of Final Appeal has had to consider how these principles should be reflected by the courts. In delivering judgments engaging the right of abode, freedom of expression, freedom of peaceful assembly, equality, privacy, and many other rights and freedoms, the Court has developed a rich human rights jurisprudence, emphasising that any restriction of a constitutional right must be rationally connected with a legitimate purpose and no more than necessary to accomplish such purpose.

In criminal proceedings, the Court has elucidated the

legal principles relating to, among other things, the right to silence and freedom from self-incrimination in the context of undercover operations and the admissibility of such evidence, the issue of legal certainty in its application to the common law offence of misconduct in public office, the prosecution's duty of disclosure and how those principles should be applied to ensure a fair trial for an accused.

International status of CFA and the development of jurisprudence

The Court of Final Appeal has established itself as a significant source of jurisprudence for the common law world. That reputation is founded on the quality of the bench over which you have presided, which owed much to your success in attracting eminent judges from other common law jurisdictions to serve as non-permanent judges and local barristers of high repute to join the High Court bench.

Judgments of the Court of Final Appeal have been well regarded internationally and some, such as the ones on the defence of fair comment in defamation, the doctrine of substantive legitimate expectation, and the interpretation of tax statutes, have been cited in other common law jurisdictions contributing to the development of the common law in other parts of the world.

CJR and mediation

As a reformer, you spearheaded the Civil Justice Reform. The reforms introduced significant changes in civil procedures, aimed at improving access to justice at reasonable cost and speed, without compromising the notions of justice as we know them. The reforms are already bringing about a change of culture. Gone are the days when civil proceedings could be approached at a leisurely pace. The courts are also now more robust and proactive in terms of case management, and mediation, which you actively promoted with foresight and personal effort, is now firmly recognised as part of the dispute resolution culture.

And many more contributions to strengthen the administration of justice

As Chief Justice, you have played a crucial role in the expansion of legal education, the development of the legal profession and, as the longest serving member of the Law Reform Commission, in the reform of Hong Kong's statute law.

You have throughout your tenure shown concern for the ordinary litigant who comes before the courts and you have

been instrumental in enhancing the transparency of the judicial process, by opening up chambers hearings in civil proceedings to the public, extending the use of Chinese in the courts, providing access to judgments of the courts through the Judiciary's Internet website, setting up the Resource Centre for Unrepresented Litigants and publishing the Guide to Judicial Conduct to ensure the highest judicial standards.

You attached great importance to enhancing the mutual understanding of judges in the Mainland and Hong Kong of each other's system. In the past 13 years, you have made great efforts to develop this through conferences, visits and courses.

The perfectionist

Chief Justice, in you we see a lifelong pursuit of excellence. But put more frankly, you are well-known as a perfectionist. Your strong sense of professionalism is uncompromising. You are a judge who expects nothing less from all who work with him and appear before him. All your pupils had to learn the "golden rules" by heart (the first being: "Here is your key to the office, guard it with your life!") and had his or her drafting work corrected in red ink by their master. You have set the tone and standards for our entire judiciary and the administration of justice in Hong Kong.

As a judge, you are also well-known for your clarity of thought, the incisiveness of your questions, and, above all, for your fairness and exemplary judicial temperament.

Excellence with a soul

Allow me to end on a more personal note. The Chief Justice I know is more than a giant in the administration of justice, he is an exemplar of excellence with a soul. He is above all a man of compassion whose first concern is for the people of Hong Kong. In and out of this Court room are individuals, among them members of the judiciary, legal practitioners in particular your pupils (with me included), also 11 batches of Bar Scholars, the staff of the CFA and Judiciary and many more, whose hearts have been inspired by your example, and whose lives have been touched by your generosity.

That's why many legal practitioners have been happy to give up a lucrative private practice in exchange for the one-way ticket to join the Judiciary. They see at its pinnacle an inspiring figure who truly lives out what he preaches.

Conclusion

And as to the future, I cannot resist referring to Theo Mathew's advice on retirement as given in his "Forensic Fables" because of its remarkable relevance:

"There was once a wise old bird who retired from the Bench the very moment he had done his 15 years (in your case, CJ, just a little bit longer than 13 years). The wise old bird's friends assured him he would be bored to tears ... Did he miss the dear old courts of justice? Not a bit of it. The wise old bird took a nice little place in the country, and thought out an admirable routine (both, I know CJ, you have also done). He rose late, breakfasted comfortably, read the Times (skipping the law reports) and had a look at the pigs (in your case, probably, had a look at the race horses). Then he lunched and read a novel (in your case, CJ, I know you have already got a long list of books to enjoy including "War and Peace"). At 4.30 he took a cup of tea, ... At 7.30 he dined, finishing up with two glasses of vintage port, an old brandy ... Before retiring to rest he consumed a stiff whisky and soda, and had another if he felt he wanted it (I remember you did keep a bottle of whisky in chambers in the old private practice days) ... The wise old bird firmly declined to be bothered with Quarter Sessions, Petty Sessions, or Any Nonsense of that kind (I suppose, in your case, CJ, you will decline to be bothered by the CFA, CJR, OAT, JORC and the like). He thus survived to celebrate his 98th birthday and had the extreme satisfaction of outliving all his contemporaries. Moral - retire."

So, Chief Justice, on behalf of myself, the Department of Justice and the Hong Kong SAR Government I wish you a long and happy retirement, during which you may devote your energy to many other worthwhile causes, spend more time with your grandchild and on your hobbies, and even brush up on your skills with a musical instrument. You will also have more time to go hiking with Judy, who has been your quiet supporter for decades, and to whom we, the whole of the Hong Kong community, are also deeply indebted. Thank you very much to both of you.

Ends/Friday, July 16, 2010