

SJ's Speech at Ceremonial Opening of the Legal Year 2011 (with photo)

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Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Ceremonial Opening of the Legal Year 2011 today (January 10):

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

2010 has been a year of changes. We bid farewell to former Chief Justice Li, and warmly welcomed Chief Justice Ma, who in turn had to say goodbye to his wig. Chief Justice Ma's appointment received unanimous support in the community. There is no doubt that under his able leadership the Judiciary will continue to be the cornerstone of our legal system.

The ranks of the Judiciary were strengthened further in 2010 by the recruitment of leading legal practitioners. Justices Bharwaney, Fok and Macrae robed in scarlet today were last year among leading counsel robed in black. The Judiciary's gain is of course the loss to the Bar and to my Department. But long may that noble tradition of elevation continue.

2010 saw new landmarks emerging in the legal landscape. The Legal Practitioners (Amendment) Ordinance was enacted last January. It enables solicitors meeting the eligibility requirements to apply to an Assessment Board for rights of audience before the High Court and the Court of Final Appeal. Formed in July 2010, the Assessment Board is now preparing the related subsidiary legislation. Once it is approved by the Legislative Council, the new regime will be brought into full operation.

After a long gestation, the new Arbitration Ordinance

was enacted in November, ushering Hong Kong into a unified arbitration regime based on the UNCITRAL Model Law. The new Ordinance, which also empowers the Hong Kong court to recognise and enforce interim measures ordered by an outside arbitration tribunal, further strengthens our credentials as a prime international arbitration venue.

Promoting international arbitration is a priority policy of the Government. A key agreement was signed last October between my Department and the China Council for the Promotion of International Trade, who is the overseeing body of CIETAC, the China International Economic and Trade Arbitration Commission, to strengthen cooperation between the arbitration and mediation bodies based in Hong Kong and those in the Mainland.

We also see the need to foster closer legal co-operation with Macao, our neighbour SAR. My Department will actively seek the signing of an arrangement on reciprocal enforcement of arbitral awards with Macao, along the lines of the arrangement with the Mainland signed back in 1999.

Shortly after the Arbitration Ordinance, the Matrimonial Proceedings and Property (Amendment) Ordinance was enacted in December. By enlarging the Court's jurisdiction, the amendment will help alleviate financial difficulties and injustice suffered by a party who has been granted a divorce order in another jurisdiction including the Mainland.

But to address the diverse issues arising from the breakdown of a marriage between a Hong Kong party and a Mainland party, a more comprehensive scheme is needed. Discussion is continuing with the central authorities in the Mainland towards a mutual arrangement regarding recognition and enforcement of matrimonial orders made by the courts or other proper authorities of either side. We shall have to count on the support of the legal profession to help identify the issues as well as solutions.

More legislative programmes are in the pipeline. The Legal Practitioners (Amendment) Bill which seeks to introduce Limited Liability Partnership for the solicitors' practice in Hong Kong was introduced into the Legislative Council last June. We are now working closely with the stakeholders and the legislators with a view to striking a proper balance between limiting professional liability and safeguarding public interests. We are hopeful that the Bill can be passed in the current legislative session.

Access to the law is a fundamental element of a jurisdiction that upholds the rule of law. We will establish a new online legislation database containing updated consolidated legislation with improved functions to facilitate users to navigate through legislation. The Legislation Publication Bill, which seeks to give a legal status to that database, was introduced into the Legislative Council in October last year.

Speaking of legislative programmes, I am grateful to hear from the legal profession their concern about the implementation of the Law Reform Commission's reports. It is of course in the interests of the Commission, the Government and the community that the Commission's hard work come to fruition and that its reports are considered within a reasonable time frame.

As Chairman of the Commission, I have specifically impressed upon bureaux with policy responsibility over the reports the importance of responding to such reports and of speeding up their consideration and/or implementation. I will continue to do so. This concern has been duly acknowledged by the responsible bureaux. However, the complexity and scope of the subject-matter of the reports vary greatly and some are likely to require longer than others for bureaux to consider.

Although members of the Commission and its sub-committee members volunteer their services, part-time and unpaid, which means that some Commission projects may take longer to complete, it has the considerable advantage that those projects benefit from the wide range of expertise represented by the Commission and the sub-committee members which might not otherwise be available. Their input to the law reform process is invaluable.

Another area where the legal profession and other stakeholders are in a strong spirit of cooperation is the promotion of mediation. Practice Direction 31 on Mediation came into operation on January 1, 2010, but already we have heard of suspected abuses where mediation was reduced to a "tick-box" and a motion to go through. The question of quality control of mediation and mediators has become more pressing.

Following the publication of the Report of the Working Group on Mediation for public consultation in February, we have received positive and constructive feedbacks on the 48 recommendations. There was a strong call to put in place a system of single accreditation of mediators much earlier than recommended.

I have just set up a new Mediation Task Force to implement some of the recommendations and to continue deliberating on those unresolved. The Task Force will grapple with the single most important question of accreditation and help my Department promulgate the legislation in respect of Mediation. The latter, as supported by the majority of feedbacks received, will provide a common framework for the conduct of mediation in Hong Kong, without reducing its flexibility.

The collaborative spirit does not stop there. The Department of Justice briefs barristers and solicitors to prosecute on fiat, many of whom are at the beginning of their

legal careers. While it is important to make available such opportunities to develop advocacy skills, it is equally important that the quality of justice delivered to the community is not compromised.

In order to assist young lawyers to develop the requisite levels of skills, the Law Society, the Bar and my Department have forged a training partnership. Working together we shall arrange teaching sessions that will impart not just legal knowledge of criminal procedure to those attending but will also enable them to practise their courtroom skills under the experienced eyes of senior practitioners.

Looking ahead, with the ever growing public awareness of individual rights and freedoms, the Administration and the Court will continue to be occupied with judicial review applications. Some will touch on constitutional, complex and sensitive issues, capturing the public and media attention, and having far-reaching effects. Those of us in the Administration will keep reminding ourselves that "sound administration must rest upon a sound legal basis" and will make our best endeavour to discharge our duties.

In the meantime, the legal profession is faced with keen competition especially when it comes to the Mainland legal services market. It is time for us to critically review the effectiveness of the measures under CEPA and to explore new avenues of cooperation.

Many searching questions need be answered: What further liberalisation measures are feasible? Are we providing the most sought-after and value-for-money legal expertise needed by the Mainland enterprises? How can we not only articulate but also prove that more favourable treatment for Hong Kong legal practitioners will result in mutual benefit?

In this connection, the Legal Services Forum held in July 2010 in Shanghai, organised by my Department in conjunction

with the legal profession and arbitral institutions from Hong Kong, provided a good opportunity for these questions to be highlighted, discussed and answered. Top legal practitioners and professionals shared their experience in areas such as corporate finance, intellectual property, international trade and commercial dispute resolution, and sought to identify new modes of cooperation in the face of the changing global economic trend with China playing a more active and significant role.

As many parts of the common law world are still suffering from debts and austerity budgets, in 2010, here in Hong Kong we still had a surplus and even experienced a record year in terms of Initial Public Offerings, raising more than HK\$412 billion as of mid-December. We count our blessings but dare not be complacent. Changes can come any time. How Hong Kong can continue to shine as a place where justice is readily available, where the law provides the most sustainable infrastructure for our economy and the most competitive edge for attracting international investment, where ordinary people are mature enough to protect fundamental rights and freedoms by properly exercising them and respecting those enjoyed by others, will affect the long-term well-being of the SAR. It calls for effort, goodwill and cooperation from all sides.

Chief Justice, it only remains for me to wish you and everyone good health and every blessing in the New Year.

Ends/Monday, January 10, 2011