

SJ's Opening address at Conference on Law Reform (English only)

Following is the opening address by the Secretary for Justice, Mr. Wong Yan Lung, SC, at the ONC Conference on Law Reform "Does law reform need reforming in Hong Kong?" at the University of Hong Kong this morning (September 17):

Professor (Johannes) Chan, the Honourable Justice Michael Kirby, Distinguished guests, ladies and gentlemen,

It is indeed my great pleasure this morning to welcome you all, particularly those of you coming from overseas, to attend this special conference on law reform in Hong Kong.

May I start by congratulating the organisers for putting together a programme with distinguished speakers with extensive experience of law reform from various jurisdictions? It says much of the calibre of our speakers and the interest in law reform that so many of you have chosen to spend this fine Saturday morning here.

I am particularly delighted to welcome and thank the Honourable Justice Michael Kirby, the first Chairman of the Australian Law Reform Commission, who will be delivering a keynote speech later today sharing with us his experience and insight on law reform. There are few more respected and experienced figures in the field, or more compelling as a speaker, than the Honourable Justice Michael Kirby.

Sources and channels of law reform in Hong Kong

In this conference, there is little need for me to stress the importance of law reform. Any system of law will require constant review to ensure that it keeps pace with changes in society, whether technological, economic or social. And the task of ensuring that our laws are kept up to date becomes both harder and more vital as ever more spheres of activities are permitted or regulated.

Here in Hong Kong, as in other jurisdictions with vibrant socio-economic activities, our statute book has expanded substantially in recent years. However, there are reasons special to Hong Kong accounting for the enhancement of the legislative work in the past decade or so.

Firstly, our constitution, the Basic Law, and earlier the Bill of Rights Ordinance have incorporated into Hong Kong the major international covenants on fundamental human rights protection. Coupled with the power of the court to strike down local legislation in contravention with the Basic Law, we have to be very vigilant to make legislative changes to ensure that our law is compliant. Some changes had to be effected on an expeditious basis following specific adjudication by the court.

Secondly, the rapid globalisation, the need to maintain Hong Kong's competitive edge, and the need to bring local law in line with international standards, have also generated the needs for new legislation in areas such as banking, shipping, corporate governance, public health, as well as international cooperation against terrorism and money laundering.

Thirdly, there are new laws necessitated by the Reunification and the ever increasing interaction with the Mainland. For example, we have successive Adaptation of Laws Ordinances to adapt specific legislations so that they conform with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the PRC. Other examples include the Mainland Judgments (Reciprocal Enforcement) Ordinance Cap.597 to enable reciprocal recognition and enforcement of certain judgments between Hong Kong and the Mainland, and, for example, the Shenzhen Bay Port Hong Kong Port Area Ordinance Cap.591 to deal with certain legal issues to facilitate border crossing.

In fact, most of the changes in the law are brought about

not by law reform agencies such as the Law Reform Commission. The government bureaux are themselves the main agents of law reform who often have to carry out detailed research and public consultation before introducing any bill into the legislature. For example, the Competition Bill, which is currently being vetted by the Legislative Council, is the subject of a very intensive specialist consultancy study and public consultation, before the same was introduced.

In fact, the Department of Justice itself, apart from providing secretarial support to the Law Reform Commission, also plays a role in bringing forward law reform measures. In February this year, for example, legislative provisions promoted by the Department of Justice were brought into force to relax the regime for applications for financial relief following a foreign divorce. In June, significant reforms to the Arbitration Ordinance came into effect, which have enabled Hong Kong to have a unified arbitration regime based on the UNCITRAL Model Law on International Commercial Arbitration. The new arbitration law of Hong Kong is the product of years of admirable joint efforts of the arbitration fraternity in Hong Kong and the Department of Justice, who worked together as an expert Working Group, as well as the contribution of the Legislative Council, who vetted the bill carefully through numerous Bills Committee meetings, and in particular, the Honourable Margaret Ng who chaired that Bills Committee.

Before going into the Law Reform Commission in a bit more detail, I should add that we have in Hong Kong another specialist law reform agency, the Standing Committee on Company Law Reform, which was set up in 1984 under the Companies Registry to advise the Financial Secretary on amendments to the Companies Ordinance and other related Ordinances. The Committee has played a leading role in the major review of companies legislation which is now well under way.

Law Reform Commission in Hong Kong

Coming now to the Law Reform Commission (LRC), I should first of all acknowledge and thank Mr Ludwig Ng of Messrs. Or Ng & Chan. Ludwig has shown an admirable burden to improve the law reform system of Hong Kong. And not surprisingly, Ludwig has been a keen critic of the existing in Hong Kong. It is of course a blessing to have a friend to tell you your faults. We do not shy away from the criticisms as there is indeed room for improvement so far as our law reform process is concerned. Those of us involved in law reform in Hong Kong will be grateful for today's conference which will no doubt provide inspiration and food for thought.

However, whilst we must embrace criticisms and be ready to learn, for all of us who are committed to bringing real and lasting improvement, we would certainly not forget that any reform in the right direction cannot be achieved without appreciating the historical context, the legal system and the community in which our law reform body is developing and operating.

As you may know or may hear more later on today that even within commonwealth jurisdictions, it is not difficult for us to see a variety of different models for their law reform agencies. In some jurisdictions, law reform is subsumed within a unit of the Government's legal department. In some others, law reform agencies are independent but wholly part-time, while still others have a single full time commissioner. Some are creatures of statute, or even incorporated into the Constitution, while others are not. Some include non-lawyers in their membership; whilst others are exclusively the preserve of lawyers.

Here in Hong Kong, the LRC was established in January 1980 as a result of a joint initiative by the then Attorney General and the Chief Justice. After the Reunification in 1997, the LRC still has the Secretary for Justice (who continues with the role of Attorney General) as its Chairman

and the Chief Justice of the Court of Final Appeal as its ex-officio member. Currently, the LRC is 12-member strong. Apart from the SJ and the CJ, other members include the Law Draftsman, one Permanent Judge of the Court of Final Appeal, Senior Counsel, experienced solicitors, eminent law professors, and other distinguished lay members.

The Commission may also appoint sub-committees, drawing from an even wider pool of talents in the community and within the Administration, to study specific issues. The LRC currently has six subcommittees, looking into different subjects. Just to give you a feel of the calibre of these sub-committees: The Class Actions sub-committee is served by, inter alia, two judges one of whom is from the Court of Appeal, and two senior counsel. The one on Review of Sexual Offences has on it a criminal judge and two senior criminal silks and a law professor from this University. Then we have the Sub-committee on Charities who published in mid June 2011 a consultation paper proposing that a wider ranging regulatory regime for charities should be introduced in Hong Kong and that a charity commission should be set up as the regulatory body for charities. The Sub-Committee is chaired by the former Chairman, now Vice-Chairman, of the Hong Kong Council of Social Service. Members include representatives from NGOs, lawyers as well as those from the Social Welfare and Inland Revenue Departments.

Hence, it can be seen that the collective wisdom and experience on the Law Reform Commission and its Sub-Committees are pretty remarkable and probably not always found in other jurisdictions.

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 and experience represented by the Commission and the

sub-committee members which might not otherwise be available.

Furthermore, because of such composition of membership, comprising members of the judiciary and outside bodies most affected by the subject reform, the independence of the LRC and its recommendations can hardly be questioned. Further, the representation from the relevant stakeholders and government departments in the LRC also ensures that the discussion will not be divorced from the practical considerations, and hence strengthening the prospect of implementation.

It is also important to note that, despite the part-time nature of the LRC members and the subcommittee members, they are supported by a secretariat composed of full-time counsel, led by the Commission Secretary, Mr Stuart Stoker, who will also be one of the speakers in a panel discussion later. These counsel carry out all necessary research and act as secretaries to the Commission and its sub-committees. Once the Commission has published a final report, counsel may be directly involved in assisting the relevant policy bureau of Government to implement the Commission's proposals through amending legislation.

Also public consultation is organised with the assistance of the Secretariat. Such consultations can be very elaborate, as we have seen in the current consultation exercise on Charity Law. Since launching the consultation exercise in June this year with a press conference attracting extensive coverage and uploading the consultation document on the LRC website, the Sub-committee chairman and members have attended briefings with various stakeholders, and a special meeting of the Legislative Council Welfare Services Panel, explaining the recommendations and exchanging views. The public has been enthusiastic in submitting responses to the LRC secretariat, who will be coordinating the same for the Commission's further consideration.

Hong Kong is a small jurisdiction. But we are indeed fortunate to have such strong goodwill and support from the legal fraternity and other sectors who are ready to contribute their expertise and time for the public good. While we shall certainly consider how we can further strengthen the institutional set-up of the LRC, I don't think we should overlook the strengths of the present system.

Implementation of LRC proposals

Admittedly, one area where Hong Kong can do better is the time taken to respond to the LRC recommendations and to implement them. The legal profession has, in recent years, quite legitimately expressed their concern about the implementation of the LRC's reports. As I have stressed in my speech at the Ceremonial Opening of the Legal Year in January, it is undoubtedly in the interests of the Commission, the Government and the community that the Commission's hard work (including my own as Chairman) come to fruition and that its reports are considered within a reasonable time frame. In this regard, when responding to a question in the Legislative Council in January, the Chief Secretary affirmed that the Administration attaches great importance to the recommendations of the LRC and agrees in principle that timely actions should be taken to follow up on the recommendations. Of course, as one can appreciate, the complexity and scope of the subject-matter of the reports vary greatly and some are likely to require longer than others for individual bureaux to consider.

On my part, as Chairman of the Commission, I have specifically impressed upon the responsible Government policy bureaux the importance of responding to Commission reports and of speeding up their decisions and actions on implementation, and I would continue to do so.

The Administration has now agreed upon a new set of guidelines to improve the existing mechanism and timeliness

on response and implementation. For all new LRC reports, the relevant bureaux are required to provide a detailed public response, setting out which recommendations they accept, reject or intend to implement in modified form, to me as the Chairman of the LRC as soon as practicable. In any event, an interim response setting out the timetable for completion of the detailed response and the steps taken will have to be provided within six months following the publication of the LRC reports.

Concluding remarks

Let me close by reiterating that there is much in the process of law reform in Hong Kong which is right and needs preserving. However, as in any field, there is of course scope for improvement. Today's conference will provide the opportunity for us to examine what areas of improvement we can consider. Someone once said, "You can judge your age by the amount of pain you feel when you come into contact with a new idea." Well, ladies and gentlemen, I can assure you that in this regard, we who are involved in law reform in Hong Kong and elsewhere are by definition reformists and we are forever young and pleased to listen to new ideas.

I wish this conference every success. Thank you.

Ends/Saturday, September 17, 2011