

**Speech by the Hon Rimsky Yuen, SC, JP,
Secretary for Justice
at the Farewell Sitting for the Hon Mr Justice Bokhary PJ
on 24 October 2012**

Chief Justice, Chief Judge, Members of the Judiciary, Chairman of the Bar,
and President of the Law Society

We are gathered here today to pay tribute and to express our utmost gratitude to My Lord, Mr Justice Bokhary, on the occasion of this special sitting to mark his retirement as a Permanent Judge of the Court of Final Appeal (“CFA”).

Distinguished legal and judicial career

2. Viewed from any angle, there cannot be any doubt that Your Lordship has a very distinguished legal and judicial career.

3. Your Lordship was called to the Bar in Hong Kong in 1970 and was appointed Queen’s Counsel in 1983. As a barrister, Your Lordship was involved in many landmark cases which remain leading precedents that no practitioners can afford to miss in their practice.

4. After having a very successful practice, Your Lordship joined the Judiciary as a High Court Judge in 1989, and was quickly elevated to the Court of Appeal as a Justice of Appeal in 1993. On the birth of the Hong Kong Special Administrative Region on 1 July 1997, Your Lordship was appointed a Permanent Judge of the CFA. Together with other founding members of the CFA, Your Lordship has played an important role in

making our new constitutional order work despite the huge challenges.

5. Many of the judgments delivered by Your Lordship are regularly cited in our courts, and many of your observations frequently quoted in discussions of human rights and other areas of public law. Among others is the observation in *Secretary for Justice v Yau Yuk Lung* (2007) 10 HKCFAR 335, a case concerning equality before the law, where Your Lordship said (at para. 33):

“Of the many and varied purposes for which law is made, none is more important than that of declaring, protecting and realizing the full potential of human rights. And there is no better way to secure these rights than ensuring that they are enjoyed by everyone in equal measure.”

6. Your Lordship’s various dissenting judgments have attracted certain discussion in the legal circle and in the community. This is perfectly understandable. In other common law jurisdictions, dissenting judgments likewise attracted attention and studies. Some applied the cost-benefit analysis and put forward economic models seeking to explain judicial dissents¹. Others compiled statistics and compared the rates of dissenting judgments in different jurisdictions². All of them, however, ultimately highlight the point that dissenting judgments demonstrate a jurisdiction’s freedom of speech and judicial independence.

7. The Honourable Mr. Justice Michael Kirby, a leading Justice of

¹ See, e.g., Lee Epstein, William M. Landes & Richard A. Posner, “Why (and When) Judges Dissent: A Theoretical and Empirical Analysis” (John M. Olin Law & Economics Working Paper No. 510) (2^d series) (January 2010).

² See, e.g., C. Hanratty, “Dissenting Opinions in the UKSC” (19 August 2010), available at: <http://ukscblog.com/dissenting-opinions-in-the-uksc>.

the High Court of Australia³, expounded as follows when delivering the 10th Annual Hawke Lecture in October 2007⁴:

“ each judge is independent. Each has an equal voice. This is said to be “all but universally recognised as a necessary feature of the rule of law. Judges are expected [to] be indifferent to political influence and expediency. Their independence necessarily includes, “independence of one another”. Judicial independence is not provided for the benefit or protection of judges as persons. It is there as an institutional protection of the people.

As the final appellate court in this country, disagreement in the High Court is as inevitable as it is common. Finding the common law is far from an exact science. Special leave to appeal is rarely granted unless there is a reasonably arguable point in a case. This is why it is misleading to look simply at the rates of dissent and agreement amongst the Justices of the High Court.

In the law, as in life, disagreement can only be properly understood by someone when they know the reasons for the dissent. Sometimes, the issues are not easily simplified. Fundamental values and notions about our society may be at stake. In many cases, judicial dissent is critical to the honesty, transparency and good health of the institution concerned.”

8. Irrespective of whether the seeds of ideas planted by Your Lordship’s dissenting judgments would take root, the judicial dissent expressed by Your Lordship demonstrates beyond doubt the independence of our CFA and indeed our entire judiciary, a core value which we of course will fight to maintain.

³ Like our Court of Final Appeal, the High Court of Australia is the final appellate court of Australia.

⁴ The lecture is entitled “Consensus and Dissent in Australia”, delivered on 10 October 2007.

Achievements outside courtroom

9. Your Lordship's contribution to Hong Kong goes well beyond the courtroom.

10. In 1993, Your Lordship was appointed by the Governor to conduct an independent inquiry into the Lan Kwai Fong disaster that took place on 1 January 1993. The Report prepared by Your Lordship contained many useful recommendations, which have since brought much lasting improvements to crowd control arrangements for mass gatherings and festive events in Hong Kong.

11. Any account of Your Lordship's contribution would not be complete without mentioning the significant role you had played in respect of Solicitor's Higher Right of Audience. In 2004, Your Lordship was appointed the Chairman of the Working Party on Solicitors' Higher Right of Audience. In the Report released in November 2007, the Working Group recommended a proposal for granting higher rights of audience to solicitors. Following the acceptance of the Report by the then Chief Justice, the relevant legislative amendments were introduced into the Legislative Council in June 2009 and eventually enacted in January 2010. The emergence of this new regime would not have been possible without the vision and leadership of Your Lordship in the Working Group in the first place.

Key recognition of achievements

12. It is of course not surprising that Your Lordship's contribution has earned much recognition. Just to name a few, Your Lordship was

appointed an Honorary Bencher of the Middle Temple in October 2001. In June this year, Your Lordship was one of the 6 recipients of the Grand Bauhinia Medal award, which is the highest award under the Hong Kong SAR honours and awards system, in recognition of their significant contribution to Hong Kong or for their dedicated public and community service. The citation in respect of Your Lordship specifically referred to your loyal and distinguished service in the Judiciary for over 23 years.

Farewell but not 'good bye'

13. Whilst this is a farewell sitting, it is certainly not an occasion for saying "good bye" to Your Lordship, since you will continue to serve our community as a non-permanent Hong Kong Judge of the CFA after your retirement. We have no doubt that Your Lordship's vast experience and expertise would be put to very good use in your new role as a non-permanent Hong Kong judge of the CFA.

14. Finally, may I take this opportunity to thank Your Lordship for the immense contribution you have made to Hong Kong. For myself, and on behalf of the Department of Justice, I wish you every success in your next phase of life and all your new pursuits. I trust Your Lordship will enjoy more quality time with your family. May I also wish you and your family good health and happiness.