

**Speech by the Hon Elsie Leung,  
Secretary for Justice  
at the Luncheon of the Rotary Club of Hong Kong  
on 11 February 2003**

**The Role of the Secretary for Justice in  
Promoting the Rule of Law**

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Mr. President, Rotarians and Guests,

Kung Hei Fat Choy. It gives me great pleasure to attend your Tuesday Luncheon and celebrate the commencement of the Year of the Ram with you here today. The Year of the Ram heralds harmony and smooth progress. Harmony and progress will be better achieved when people know exactly the lawful boundary of their conduct, hence we all aspire a society of the rule of law, which is often said to be one of the cornerstones for the success of Hong Kong. This afternoon, I would like to talk to you about my role as the Secretary for Justice and in particular my role in promoting the rule of law.

2. The first term government of the HKSAR was a tumultuous one: amongst other things, we have weathered constitutional challenges one after another, we have battled the Asian financial crisis, and we have yet to ride out the storm of recession with the burst of the bubble economy, unemployment and economic transformation. However, the first term government has fulfilled the historical mission of a smooth transition, and the concept of “one country, two systems” has been successfully materialised. The rule of law is as robust as ever. This has been confirmed by judges retiring from their office, overseas rating agencies and foreign parliaments, and indeed the rule of law is still one of the distinct features of Hong Kong that we are all proud of.

**The Rule of Law**

3. The rule of law has a number of meanings and corollaries. In brief, it means that everything must be done in accordance with the law - the principle of legality. It means nobody is above the law. In the context of the Government, its powers must derive from the law

and be exercised in accordance with the law. Therefore, even where the Government is vested with certain discretionary powers, its discretion must be exercised rationally and without procedural impropriety, and the courts are in a position to prevent abuse. Citizens have the right to challenge in courts the legality of acts of the government (including the validity of the law under which it acts) and disputes are to be adjudicated by an independent judiciary. Justice must also be reasonably speedy and affordable, because if access to the courts is slow and costly, the rule of law will be diminished. The law should be even-handed between government and citizens, striking a balance between the needs of fair and efficient administration and the rights of the individual. The observance of the rule of law makes a government one of laws, and not one of men.

4. These principles are fully understood, not only by members of my department, but by the Administration in general. They form the ground rules by which Government policies and legislation are formulated, and administrative decisions are made. Moreover, the many court decisions involving the Government since Reunification indicate not only that the Government continues to abide by and promote the rule of law, but also that members of the community understand that the Government is subject to law.

### **The Post of the Secretary for Justice**

5. The Department of Justice is headed by the Secretary for Justice, who fulfils a wide range of duties. Chief among these is to act as the principal legal adviser to the Chief Executive, to the Government and to individual Government bureaux, departments and agencies. The Secretary for Justice is also a member of the Executive Council.

6. The decision to prosecute criminal offences is the sole responsibility of the Secretary for Justice who in this respect operates independently, free from any interference. The Secretary for Justice is also the defendant in all civil actions brought against the Government and represents both the Government and the public interest in the courts.

7. As guardian of the public interest in a wider sense, the Secretary for Justice may make application for judicial review to enforce public legal rights. The Secretary has a right to intervene in any case involving a matter of great public interest. The Secretary represents the public interest as counsel to tribunals of inquiry. The

Secretary is the Protector of Charities and must be joined as a party in all actions to enforce charitable or public trusts. The Secretary for Justice also has a more general public interest role as *amicus curiae* (literally, friend of the court), the most important example of which is the bringing of alleged contempts to the notice of the courts.

8. Amongst many other functions, the Secretary for Justice is Chairman of the Committee on Bilingual Legal System, the Legal Practitioners' Liaison Committee and the Law Reform Commission, Vice-Chairman of the Fight Crime Committee, and serves on the Chief Executive's Advisory Committee on Legal Education.

9. In discharging both a policy-making function and a quasi-judicial function, the Secretary for Justice is like many Attorneys General or Ministers of Justice in the common law world. I hope these will summarise the position of the Secretary for Justice.

### **Policy portfolios**

10. The Department of Justice comprises six divisions, five of which are professional divisions each headed by a Law Officer to whom the Secretary of Justice delegates certain of her powers and responsibilities. They are the Legal Policy Division, the Prosecutions Division, the Civil Law Division, the Law Drafting Division and the International Law Division. They together carry out the Policy Objectives of the Department outlined above.

### **Mission of the Department of Justice**

11. The mission of the Department of Justice is to uphold the rule of law, provide efficient and effective legal services to the Hong Kong Special Administrative Region Government, and to maintain and improve the present legal system.

### **Policy Objectives 2002-2003**

12. The major policy objectives of the Department of Justice for July 2002 to June 2003 are formulated in accordance with the mission statement which I have just recited. The main objectives are:

#### *Legal education, profession and services*

- Implementation of the Legal Education Review: conversion of 3 to 4 years LLB course, and major changes to vocational legal training, and replacing the Advisory

Committee on Legal Education by a new pro-active statutory body;

- Commissioning a socio-legal research into the unmet need for legal services;
- Continuing dialogue with the Law Society and the Bar Association on higher right of audience; looking into the suitability of introducing conditional fees;
- Promoting Hong Kong as a legal services centre; facilitating law firms setting up offices in the Mainland and promoting closer co-operation and exchanges between Hong Kong and Mainland law firms; facilitating exchanges between Hong Kong and Mainland lawyers through mock-trials and Common Law Training Programme for Mainland officials;
- Maintaining links with lawyers of other jurisdictions, particularly common law jurisdictions, and facilitating exchanges to improve the professional standards of Hong Kong lawyers;
- Participating in conferences, seminars, forums, school visits, media interview, etc. to disseminate legal knowledge to members of the public;

#### *Fulfilling reporting obligations under UN Conventions*

- Assisting Policy Bureaux in the preparation and presentation at hearings of UN Committees, of reports by the HKSAR pursuant to the 6 human rights conventions applicable to Hong Kong: ICCPR, ICESCR, CEDAW, CRC, CAT and CRD;

#### *Criminal justice*

- Reviewing and publishing the Statement of Prosecution Policy and Practice to reflect changes in the law and to meet the public's expectations on transparency and accountability (completed in November, 2002), publishing a Yearly Review and Criminal Appeals Bulletin in order to promote awareness of the latest developments in the criminal law;

- Conducting criminal prosecutions: the estimated number of new prosecutions in 2003 is 211,730, and estimated number of serious crimes to be tried in the Court of First Instance in 2003 is 372;
- Developing expertise in specialised areas such as computer crimes, organized and serious crimes, transnational crimes, etc.
- Promoting uniformity and continuity in sentencing and assisting the lower courts through the appeals and review mechanisms to establish or vary sentencing tariffs or guidelines;
- Taking part proactively in the activities of the International Association of Prosecutors to contribute to the development of prosecution thinking at the international level, and to promote the image of the prosecuting authority of Hong Kong;
- Promoting better understanding and co-operation between the Hong Kong Police Force and other law enforcement agencies to encourage shared values for an effective and just criminal justice system in Hong Kong.

#### *Services to the Government*

- Participating in judicial review proceedings on behalf of the Government and ensuring through such process high standards of public administration in accordance with the rule of law;
- Assisting Policy Bureaux in promoting business ethics and enhancing the efficiency of the regulatory system in financial and trade activities, and securities and corporate governance through insider dealings and market misconduct proceedings;
- Advising Government Bureaux and Departments in administrative and policy matters to ensure full compliance with the Basic Law, human rights law, legal policy and in brief the rule of law;
- Attending before various Legislative Council Panels to brief Members and to seek their views on legal issues and

legal policy issues; working to improve the relationship between the Executive and Legislature through the establishment and improvement of legislative procedures;

### *Legislative Work*

- Carrying out drafting instructions from Bureaux and Departments as may be included in the Legislative Programme of the Government (see List of Bills submitted by the Director of Administration to the House Committee of the Legislative Council on the 8 October, 2002);
- Undertaking a computer enhancement project to improve the usability of the Laws of Hong Kong (known as BLIS) and in particular to enable the public to print and download the entire enactments from BLIS using common internet browsers.

### *International and Transnational Co-operation*

- Negotiating a Convention on jurisdiction over civil and commercial proceedings and the enforcement of foreign judgments, a new Hague Convention on legal interests in securities held through intermediaries and the establishment of a new International Convention on Maintenance Obligations;
- Participating in a review of the 3 existing Hague Conventions on civil procedure (evidence, service and legalization) and further discussion on the Hague Convention on the Civil Aspects of Child Abduction;
- Participating in CEPA talks with New Zealand, following up on “Doha round” of WTO negotiations; advising on the WTO’s Government Procurement Agreement and taking part in activities of International Maritime Organization in particular its Legal Committee;
- Continuing to advise on bilateral negotiations on ASAs, IPPAs, and DTAs, and to conduct negotiations on legal co-operation including mutual legal assistance between Hong Kong and Macau .

13. Although the work of the Department of Justice depends very much on the policy objectives of other Bureaux and Departments,

yet our role is pivotal in maintaining consistent standards of respect for the rule of law throughout the Government, through the advice we give, the prosecution and litigation we handle and the performance of our other constitutional functions.

## **Conclusion**

14. Finally, I would give you an illustration of how we put our mission statement into practice: the proposals for implementation of Article 23 of the Basic Law. Whether the law to be promulgated will be effective and efficient in protecting national security is a matter for which we have to rely on the professional judgment of the Security Bureau, but every piece of legislation which receives the approval of the Executive Council and is introduced into Legislative Council must have the verification of my Department that it complies with the Basic Law and the human rights provisions of the Basic Law, complies with legal policies and indeed, the rule of law. One of the human rights provisions in the Basic Law is contained in Article 39, which reads:-

“ The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

which means any restriction must be reasonable, rational, proportionate to its purpose and is necessary in a democratic society for the protection of national security, etc. Therefore, ensuring that the current proposals are consistent with Article 39 of the Basic Law, we researched into the laws of many other jurisdictions for the protection of national security, local legislation and case law, international law and precedents and norms on the application of the said human rights covenants. We are confident that they do comply with the international human rights standards and that the proposals will not take away or erode the fundamental rights and freedoms protected by Chapter III of the Basic Law. A specific example is the application of Johannesburg Principles as a result of the use of force, violence or public disorder becomes a necessary ingredient of the

proposed offences of treason, secession, subversion and sedition.

15. Ladies and gentlemen, you will therefore see from our strategic planning how we aim at promoting the rule of law, the mission which we set out to achieve. As head of the Department, I am responsible and accountable for policy formulation and implementation of the Department of Justice. Our Policy Objectives were formulated with the concerted efforts of the 5 Law Divisions and the Administration and Development Division of my Department and are fully supported by the Law Officers, the Director of Administration and Development, and their dedicated subordinates and indeed every member of the staff of the Department. We shall continue to do our best to promote the rule of law. Some foreign politicians told us that the world will be vigilant on our position regarding the rule of law because they attribute that as the foundation of our success. I told them that they need not worry, because we ourselves are vigilant since this is also what our society treasures and we value it more than, if not as much as, they do.

16. Legal issues are by their nature controversial. There has been a lot of misunderstanding over constitutional issues, over prosecutorial decisions, as well as legal procedures. I do not purport that I would be able to explain them all to you today, but I shall be glad to come back from time to time to do so in the future.

17. It leaves me to wish you all a Prosperous and Happy New Year. Thank you.