

(Translation)

**Speech by the Secretary for Justice, the Hon Elsie Leung,
at the debate on the Policy Address 2005
in the Legislative Council
on 27 January 2005 (Thursday)**

Madam President,

I would like to respond to the remarks made by the Honourable Margaret Ng, Li Kwok-ying, Albert Ho, Martin Lee and Albert Cheng.

2. First of all, I must thank the Honourable Margaret Ng and Li Kwok-ying for their valuable opinions on the administration of justice and legal services. Some of their comments cover issues that have been under discussion, while other suggestions are innovative and constructive. I will follow up these issues with my colleagues in the department. Where practicable, we will incorporate those suggestions into our policy programme for implementation.

3. I must reiterate that the Government attaches great importance to the legal profession, which is a core part of our legal system and is vital to the upholding of the rule of law and the development of the legal system. I am aware of the impact brought on the legal profession by the economic restructuring, the financial crisis, SARS, the bursting of the bubble economy and the drop in property prices over the past seven years. While the profession went through a difficult time, I can see that they have turned the corner by working hard and adjusting the scope of their services. It has been reported recently that lawyers, accountants and some other professionals are once again in great demand, with salaries on the increase. The Government spares no

effort to promote Hong Kong as a regional legal services centre, facilitating the expansion of business opportunities in the Mainland market by the Hong Kong lawyers. While there may be different views on certain issues, I cannot agree with the notion which I have never heard before, that is, the Government hinders the development of the profession.

4. Regarding the subject of solicitors corporation, although amendments to the relevant principal legislation were adopted in 1997, the power and the responsibility to draft detailed rules rest with the Law Society. It was only in recent years that the initial draft of the detailed rules was completed. There has been good cooperation between the Department of Justice and the Law Society. In fact, the Secretary-General of the Law Society told the Panel on Administration of Justice and Legal Services (AJLS Panel) in his letter dated 9 December 2004: "I have had a very lengthy discussion with the Law Draftsman who has been helpful in providing a number of amendments largely of style to the original draft." I trust that Members understand that the *Legal Practitioners Ordinance* empowers the Law Society to make detailed rules subject to the approval of the Chief Justice, who will also seek the views of the Department of Justice. The Chief Justice will not allow us to obstruct such work for no good reason. We understand the complexity of the issue, especially when the principal legislation does not provide for details of the scheme but leaves them to the Law Society to decide. I have never heard of any complaints about the drafting of these detailed rules being disrupted by interference from the Government.

5. Secondly, on the Professional Indemnity Scheme, the Law Society has submitted two proposals. One of them is the Qualifying Insurers Scheme ("QIS") as mentioned by the Hon Margaret Ng. The QIS has the drawback that a client would be totally unprotected if the insurer chosen by his solicitor goes insolvent. In addition, the details of the scheme, the views of the insurers

and the protection available in the event of the insolvency of the insurer are also lacking. If the insurers refuse to provide insurance coverage to small law firms, or the premium is too high for them to take out insurance, they may have no alternative but cease their business. Besides, we agree that the original master policy scheme is more practical. We don't require the insurers to take out re-insurance to cover the risk in the event of their insolvency, but we hope that the Law Society will choose several insurers for diversification of risk. For example, if they take out insurance with four insurers, the loss of cover they may suffer will be only 25% in the event of the insolvency of one insurer. This is our position which has been clearly stated in LC paper No. CB(2) 248/04-05(06) submitted to the AJLS panel last November.

6. I have listened very attentively to the concerns over the claims companies raised by the Honourable Margaret Ng and Li Kwok-ying. The Law Society and the Consumer Council have examined the issue, but there is insufficient evidence to show that these companies cause damages in the community or that control by way of legislation is necessary. The research into the unmet legal needs of the community conducted by the Department of Justice will also look into this matter, and the issue of contingency fee is also under consideration by the Law Reform Commission. As for public education in connection with claims companies, the Law Society has reminded the public of the harm of seeking legal advice or securing legal services from unqualified persons.

7. As far as the issue of limited liability practice is concerned, it would have a major impact on our economy since different professions in Hong Kong such as medical practitioners, accountants and architects are involved. The Chief Secretary for Administration has directed the Department of Justice and the Financial Services and the Treasury Bureau to study the issue jointly before

reaching any further decision on the need to incorporate it into the Government policy.

8. The issue of Court Prosecutors is brought up in the Policy Address debate almost every year. The grade of Court Prosecutors was created on the recommendation of the Director of Audit so that simple cases can be handled more cost-effectively. Contrary to what the Honourable Margaret Ng has said, the number of cases briefed out by the Department of Justice in 2004 has increased rather than reduced. The number of court days in respect of Magistrates' cases briefed out in place of Court Prosecutors has, in fact, risen to 354.5 in 2004 from 78 in 2003. If Court Prosecutors are to be re-deployed to other posts or to replace lay prosecutors in other departments, what then shall we do with the officers who are replaced? If the matter is not handled properly, this will give rise to a situation in which public money is wasted or other people are made jobless just for the sake of briefing out cases to solicitors and barristers.

9. As to legal aid, the Government has constantly reviewed the standard scale fees for briefing out legal aid cases. In view of the market rates and deflation over the years, the Government considered that it was not necessary to make any amendments to the standard scale fees in its latest review. As regards Labour Tribunal's appeals and other related issues, the research into the unmet legal needs of the community conducted by us will also take these issues into account.

10. As far as the third law school is concerned, the Government's attitude is: we respect academic autonomy. The establishment of the third law school is supported by the University Grants Committee and the two universities. As regards the specialization of the law school, I would be glad to relay any comments to the university.

11. I will carefully consider the Hon Li Kwok-ying's views on CEPA. One of the principles of CEPA is to deal with the easier issues first. I hope CEPA III will bring more opportunities for the profession. Currently under CEPA, foreign law firms, Hong Kong law firms and Mainland law firms are prohibited to operate in partnership. The purpose is to ensure the healthy development of Mainland law firms. On the other hand, Hong Kong lawyers may operate in association with Mainland lawyers. As an association will allow both firms to retain their independence, it is more tuned in to the current trend of development. Mr Li has proposed that Hong Kong lawyers could become Mainland lawyers on passing a benchmark test rather than a comprehensive examination. This is relatively difficult as laws are intertwined and complicated. It would be very dangerous if a lawyer provides services with only a partial knowledge of the laws. Moreover, CEPA must operate on the principle of reciprocity. We have no such arrangement even though we have a liberalised service market in Hong Kong. When I made a speech on CEPA at Guangzhou last Thursday, I mentioned that Hong Kong lawyers must join hands with Mainland lawyers to secure a competitive edge by providing services which would be unavailable from foreign lawyers. At the same time, they should contribute to the development of the legal system of the country. In this respect, I share the Hon Margaret Ng's views.

12. The Honourable Albert Ho and Martin Lee criticized the interpretation and the decision made by the National People's Congress Standing Committee ("NPCSC") in 1999 and 2004 respectively. The power of the NPCSC to interpret the *Basic Law* has been affirmed by the Court of Final Appeal in the case of *Lau Kong Yung*. Mr Qiao Xiaoyang, Deputy Secretary-General of the NPCSC, came to Hong Kong twice in April last year to explain to the public the need to interpret and make decision on Annex I and

Annex II to the *Basic Law*, which I does not wish to repeat here. But I will be happy to provide a copy of his speech if Members would like to have one.

13. With regard to the criticism voiced by the Honourable Albert Cheng on the speech I gave in the United Kingdom (UK), that was delivered in response to the Six-monthly Report on Hong Kong last presented by the officials of the Foreign Affairs Committee of the UK Foreign and Commonwealth Affairs Office. The Report stated that radio-show hosts in Hong Kong had resigned because of intimidation and that freedom of speech was under threat. As an official representing the HKSAR Government, I have a responsibility to clarify that freedom of speech is protected in Hong Kong.

14. As for the Link REIT case, my standpoint remains the same all along. My views expressed in the article I wrote for publishing in eight newspapers in mid-December last year are exactly the same as those in my speech delivered in the UK.

15. Madam President, the rule of law is the cornerstone on which Hong Kong's success has been founded. As to how the Government has been maintaining the rule of law, I am not going to elaborate that again here. When I attended the AJLS Panel meeting last week, I already addressed the issue at length by giving an account in my speech of what the Policy Agenda contains as to the Government's approach to maintaining the rule of law. I will be ready to provide Members with a copy of the speech I gave that day. I would like to thank Members for their valuable opinions and request that they support the motion and vote against the amendment to the motion. Thank you, Madam President.