

**Speech by the Hon Wong Yang Lung, SC, JP
Secretary for Justice
at the 35th Annual Dinner of The Institution of Engineers
on Tuesday, 16 March 2010**

**Mr President, Prof Xu, Dr Choi, Distinguished Guests, Colleagues,
Ladies and Gentlemen,**

It is my honour and pleasure to join you this evening at your Institution's 35th Annual Dinner.

Introduction

2. The fact that the engineers have invited a lawyer to speak to them naturally leads to the question: *Is there anything in common between lawyers and engineers?*

3. Well, first and foremost, we are both professionals. We both have very high tolerance for work pressure and long working hours. Our work revolves around some kind of laws: for you engineers, you follow the laws of nature and science. For the lawyers, we follow man-made laws. But when mankind begins to interfere with nature and when nature begins to behave irrationally (just like the weather we had in the past two weeks), both of us can get very muddled.

4. Also, as professionals, both engineers and lawyers can be very stubborn if not arrogant. I have to confess that my direct contact with engineers is not extensive. In my private practice days, I have cross-examined a few and have sat with some in the Buildings Appeal Tribunal. I have to admit that, in court, most of you engineers are very familiar with your nuts and bolts, and you are yourselves very difficult nuts to crack.

5. But there are of course differences between the engineers and the lawyers in terms of our respective approaches to problems. Of course, I don't mean engineers are "boring" while lawyers are

“cunning”. Whenever problems are encountered, the instinct of an engineer is probably to roll up your sleeves to find solutions to fix the problems. But for a lawyer, the instinct is probably to find out who is to blame and how to avoid the liability.

6. That speaks very well of the engineers over the lawyers. But that positive image of the engineers suffers a little setback when I came across a website, which lists out the top 25 engineering terms and expressions (what they say and what they really mean). Among them to give you some examples: “*Customer satisfaction is believed to be assured*” which really means “*We’re so far behind schedule that the customer will settle for anything*”. And “*The Project is in progress*” which really means “*It’s so tied up in red tape that it’s completely hopeless*”.

7. Of course that’s meant for a laugh only and, in any event, that only applies to engineers of a different jurisdiction.

Building the economy and quality of life

8. Back to Hong Kong, in late 2008, I had the opportunity of listening to Mr Justice Anthony Kennedy of the US Supreme Court at a function in Hong Kong. The judge shared with us his thoughts which crossed his mind when he was admiring the stunning skyline and magnificent skyscrapers of Hong Kong, through the window of his hotel room at the Mandarin Oriental. He attributed the successful construction of these impressive buildings to the advanced technology in engineering as well as the legal expertise in finalising complicated contracts and financing.

9. That, I think, is a good illustration of the partnership between the engineering and the legal professions. Indeed, our two professions have been close partners in building Hong Kong into a vibrant and competitive metropolis.

10. So may I first of all take this opportunity to pay tribute to your Institution and to you engineers for your contribution in **building Hong Kong’s economy and our quality of life**.

11. The Shanghai Expo, opening shortly this year, is a timely reminder of where Hong Kong stands today. In this age of globalization, where competition comes from other countries as well as other Chinese cities, all of us need to be vigilant and diligent. However, we are also conscious of the many opportunities around us.

12. Whether we deserve to be called Asia's World City depends on what people see and experience here. It is important for all professionals in Hong Kong to extend our visions, and to pitch our pursuits at the international level. Echoing the President's earlier remarks, the greatest impetus to break new grounds and to set higher standards is nothing but "professionalism" - the pursuit of excellence and the commitment to give the best to the community.

13. For you engineers, opportunities and challenges abound in Hong Kong today. The implementation of the Government's Ten Major Infrastructure and other mega projects depends so heavily on your professional input.

14. However, rapid development generates new issues and problems. As Mr President you remind us, how can development be sustainable? How can we balance development against preservation, environmental protection, and heritage protection? The recent events like the Express Rail Link, and even the URA's announcement regarding Wing Lee Street today, have highlighted these issues, which Hong Kong must grapple with alongside the rest of the world. In addition to relying on your ability on the implementation front, the community needs professionals like you to help us think it through, and to formulate the way forward. We need professionals like you to provide us with unbiased expert input to enable us to make informed choices and decisions.

15. In the past 35 years, the Institution of Engineers has made sterling contribution to promote the advancement of engineering and in raising the standard and stature of the profession. In bringing together 19 engineering disciplines, the Institution occupies a vital position to facilitate exchange and inter-disciplinary collaboration, and as advocated by the President, to play a key role in building a sustainable future for Hong Kong. So well done and keep up the good work.

Building a harmonious society

16. Apart from building Hong Kong's economic growth and sustainable development, engineers have also been pioneers in another important type of building: and that is, **building a harmonious society** through the use of alternative dispute resolution (ADR), especially, mediation.

17. There has been a lot of media coverage about mediation recently. Many of you may think: "What's the big deal? We have been using mediation for years."

18. Indeed, you have, especially in resolving disputes arising from construction projects. In fact, as far as public works are concerned, in as early as 1984, your Institution had been administering the landmark *Mediation Scheme* initiated by the Government for settling construction disputes arising from 16 selected civil engineering contracts. At that time in 1984, the Government did not have its own mediation rules and therefore adopted the "*HKIE Mediation Service Rules*".

19. The significance of the *Mediation Scheme* lies not only in representing the Government's acceptance of ADR, but also in encouraging the private sector to embrace mediation. Since 1993, Government Consultancy Agreements with consultant engineers have provided for the resolution of disputes via mediation, and, failing which, by arbitration.

20. Today, with the Government having embarked on a series of major public infrastructure projects, it is important that related disputes can be resolved speedily to support timely delivery of projects within budget. My colleagues from the Development Bureau is promoting a wider use of the *partnering approach* and the *Dispute Resolution Advisors (DRA) system* in public works projects, in order to encourage the resolution of differences in opinion before formal disputes arise. And I am very pleased to learn that the Alternative Dispute Resolution Committee of your Institution is organising a briefing on this subject already.

21. Greater use of mediation has become a worldwide trend. It has long been recognised as more cost and time effective, less acrimonious, less stressful, and better able to preserve dignity and

longstanding relationship. Unlike litigation, which is a rights-based process, mediation is an interest-based process. Mediation will not always result in a settlement which can square with the relevant legal principles, but one which the parties can live with, and over which they can shake hands. Therefore some have suggested that mediation is distinctly Asian, as there is a strong element of compromise and harmony. So in promoting mediation, we may well be embarking on the process of cultural awakening.

22. Although many of you are familiar with ADR and mediation, perhaps not all of you are familiar with the new initiatives introduced by the Civil Justice Reform regarding the use of mediation. You should at least bear in mind that, under Practice Direction 31 on Mediation which came into effect on 1 January this year, parties who unreasonably refuse to mediate may be penalised by costs, even if they win the court case. Therefore, lawyers will have to advise the clients of the availability and merits of mediation and clients will have to make serious attempt to mediate in order to avoid adverse costs orders at the end of the day. The whole legal landscape is changing, and changing rapidly.

Report of the Working Group on Mediation

23. In this connection, some of you many know that the cross-sector Working Group on Mediation chaired by me have just released our report for consultation.

24. Don't worry, this is not a conference on mediation and I will not bore you with the details. However, I do urge you, as professionals who engage mediation more regularly, to read the Report and to send us your comments. You may find some of our recommendations useful or even interesting.

25. For example, we believe it will be useful to have a stand-alone Mediation Ordinance to regularize certain procedural aspects of mediation. We do not recommend mandatory mediation rules as we think the mediation process should be kept as flexible as possible. However, having statutory and standardized rules governing confidentiality and privilege, and exceptions thereto, will be useful, in order to avoid unnecessary controversy.

26. Secondly, we think it is desirable to establish a single body to accredit mediators in order to ensure quality and consistency. It will also help educate the public about mediation and mediators, and ultimately enhance public confidence in mediation. However, we do not think now is the time to prescribe a standardised system of accrediting mediators. We recommend reviewing the position of setting up a single mediation accreditation body in 5 years' time.

27. Meanwhile, we have promulgated the Hong Kong Mediation Code, which is an ethical code of conduct for mediators in Hong Kong. I have personally written to mediation service providers to encourage them to adopt the Code and to set up robust complaints and disciplinary processes to enforce it. We hope this can provide momentum toward establishing a common standard among mediators irrespective of what discipline they are in.

28. On the publicity and public education front, we have launched a very successful 'Mediate First' Pledge campaign. More than 100 companies and trade organisations have pitched in and pledged to consider the use of mediation first before resorting to other means to resolve disputes. I appeal to your Institution to join in and to encourage your members and clients as well to make the best use of mediation.

Building a caring community

29. Ladies and Gentlemen, another appeal I will make this evening is to invite your Institution and members to engage in yet another kind of building, in addition to building the economy and a harmonious society. And that is, **building a caring community and building paths for our young people in Hong Kong.**

30. I was very touched by your Institution's disaster relief efforts in Sichuan Province. Apart from responding quickly and efficiently in coordinating engineers with different expertise to provide immediate relief, the Institution has set up the *HKIE Project Sichuan Trust Fund* and task forces to take up the long-term commitment to rebuild Sichuan.

31. But I urge you to extend your compassion further to our young people at home. The fact you have invited Dr. Choi Yuen-wan, Honorary General Secretary of Break-through as guest of honour tells me

that I am probably pushing an open door. Dr. Choi, a very good friend of mine, is of course a leading light in youth work in Hong Kong. He is also a key supporter of the Government's anti-drug campaign in his many capacities. In case you do not know, Dr. Choi has also been working on a special engineering project in Sichuan to rebuild people's broken hearts.

32. The contrast between the victims of Sichuan and the youths of Hong Kong who are troubled by different types of addiction cannot be more illuminating. The former include those who struggle to live after the loss of limbs or family members. The latter include those who are wasting their lives on drugs or other forms of indulgence.

33. From my experience in tackling youth drug abuse in Hong Kong, it is apparent that the behavioural problems of our young people originate from more deep-rooted sources relating to their growth, learning and social problems. What the young people need is "positive influence" (正能量), an alternative which gives meaning, and a reason why they should not indulge or injure themselves, by drug or by other means. Very often, that influence is only available from someone they can look up to and someone who do care about them and help them see their worth.

34. To provide a platform for various sectors of the community to support our young people in flexible and innovative ways, the "Path Builders" initiative (友出路計劃) was launched back in September 2008. Dr. Choi is also one of our founders.

35. It may start off as a beautiful dream, but one and a half years down the road, I know this caring culture for the youth is rapidly taking root in this community. To date, over 200 organisations and individuals have showed their care through providing training and employment opportunities, mentorship schemes, school talks and channels to spread anti-drug messages.

36. I know that some of your members are already reaching out to students in secondary schools and tertiary institutions to share your professional knowledge and your life experience. But I appeal to you, collectively and individually, to go further to be a "Path Builder". Be a mentor to share with the young ones your life stories, help them see there can be no gain if there is no pain, ignite in them the engineering spirit: to set reachable goals, to find solutions and don't give up. The solicitors

have already started their mentorship scheme. Engineers are much bigger in numbers. I am sure you can do even better.

Conclusion

37. US President Herbert Hoover, who is also an engineer, said these wonderful words about your profession:

“Engineering is a great profession. There is the satisfaction of watching a figment of the imagination emerge through the aid of science to a plan on paper. Then it moves to realisation in stone or metal or energy. Then it brings homes to men and women. Then it elevates the standard of living and adds to the comforts of life. This is the engineer’s high privilege.”

38. I have no doubt that the elevation of the standard of living is not confined to the material aspect only. May members of the Institution continue to turn imagination into reality in building Hong Kong into a society which is sustainable, harmonious and also caring. Thank you very much.

39. Mr President, Ladies and Gentlemen, please be upstanding and join me in drinking a toast to the Hong Kong Institution of Engineers.

“The Hong Kong Institution of Engineers”