

Speech by SJ at opening session of Inaugural Rule of Law Congress (English only)
(with photo/video)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Inaugural Rule of Law Congress today (November 3):

Distinguished guests, ladies and gentlemen,

Introduction

It gives me great pleasure to welcome you to the Inaugural Rule of Law Congress which is to be held every other year in the Hong Kong Legal Week, as an event of the "Vision 2030 for Rule of Law" ("Vision 2030"). In line with the United Nations' call for a Decade of Action to achieve the Sustainable Development Goals by 2030, the theme this year is "Towards 2030: A Decade of Action for Rule of Law". Let us start with looking at the rule of law.

In 2012, members of the United Nations at the High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International Levels adopted the Declaration emphasising on the right of equal access to justice for all and reaffirmed the commitment of member states to take all necessary steps to promote access to justice for all. And in 2015, all members of the United Nations adopted the 2030 Agenda for Sustainable Development (2030 Agenda) and its 17 Sustainable Development Goals. Goal 16 recognises the importance of the rule of law as an important pillar towards the successful implementation of the 2030 Agenda. In particular, Target 16.3 promotes the rule of law at the national and international levels and ensuring equal access to justice for all.

At national levels, there are a number of iterations of the rule of law and the writings and study on the subject tend to suggest that the core common denominators can be broadly categorised into formal elements, substantive elements and procedural elements. The existence of an independent, impartial and efficient judiciary, as the procedural element, is the important safeguard to ensure observance of laws by government and the general public.

A fourth category that may be relevant and worthy of further study is the culture and level of development of the relevant jurisdiction. As noted in the UN Declaration

in 2012, the rule of law and development are strongly interrelated and mutually reinforcing. As such, is it appropriate to pass judgement on the practice of the rule of law in a developing state by the same reference points as that of a developed state? Similarly the diversity in social and legal cultures may explain why in some jurisdictions certain laws or ways of dealing with a dispute are perfectly acceptable whilst not so in others. The collection of objective data may also be a helpful and useful tool to help review the practice of the rule of law and hence to improve on it as necessary. All these will necessitate more research and study as part of the "Vision 2030" project.

In this Inaugural Rule of Law Congress, we aim to focus on two of the factors that are crucial to access to justice: "Enhancing legal aid services in ensuring access to justice for all" and "Keeping up with the times: Capacity Building for Judicial Officers".

Legal aid services

In Hong Kong, legal aid is an integral part of our legal system. At the moment there is no ceiling on legal aid expenditure for both civil and criminal proceedings. Once the statutory means and merits tests are satisfied, legal aid funding will be available. Legal aid is available in a wide range of cases, including criminal cases, judiciary review, immigration matters, torture claims, etc. Assistance schemes for eligible persons such as the Legal Assistance Scheme for Convention Against Torture & Non-Refoulement Claims and pro bono services provided by the private sector are also available. Statistics show that the total expenditure on legal aid cases over the past 10 years has an increase of over 230 per cent, from \$485.7 million in 2009/10 to \$1,133.8 million in 2019/20. In a Court of Final Appeal judgment in 2018, Chief Justice Ma remarked that "As the evidence before the court showed, Hong Kong's relatively generous system of legal aid (compared with many other jurisdictions) has ensured that most cases of public importance have over the years been determined by the courts. This has also been the Judiciary's experience". (Note 1)

One of the challenges to ensuring access to justice for all is how to make effective and efficient use of resources available to provide legal aid and yet to prevent abuse. This is particularly challenging for developing countries where resources available for legal aid may be limited. We will hear how legal aid is made available in various jurisdictions and on whether legal aid should be provided in cases before international courts or tribunals, and how we could ensure access to justice even in cross-border

situations, no doubt referring to the Hague Convention on International Access to Justice of 1980.

Capacity building for judicial officers

Hong Kong's robust and independent judiciary is internationally renowned, where the World Economic Forum Global Competitiveness Report 2019 ranks Hong Kong No. 2 in Asia and No. 8 globally for judicial independence. (Note 2) Article 85 of the Basic Law also guarantees that Hong Kong courts shall exercise judicial power independently, free from any interference. Judgments of the courts are fully reasoned and available on the Internet for easy access.

Conflicts or disagreements on social or moral values or politics ought to be dealt with by politicians, as representatives of the people. However, in recent times, some of these issues are legalised so that they are brought before the court. The rights of an individual applicant will be adjudicated and a ruling provided. It may seem to provide a definitive answer to a specific claim, but are the underlying conflicts on the value and interests relating to the social or moral debates in the society on the issue resolved? In Madam Justice McLachlin's words, "Judges no longer live in remote ivory towers; they live in the real world. Judges still speak mainly through their judgments, and hold themselves aloof from political controversy and social opinion." (Note 3) In Lord Sumption's words, "If judges assert a power to give legal effect to their legal opinions and values, what is that but a claim to political power without political responsibility?" (Note 4) I cannot wait to hear how our expert panellists would address the question of politics and law and the rigorous judicial method to be adopted in discharging judicial functions at both national and international levels.

Besides having to deal with increasingly complicated and intertwined legal and political issues, the judiciary also has to handle the unprecedented outbreak of the COVID-19 pandemic. In response to COVID-19, the Hong Kong Government has supported the development of the COVID-19 Online Dispute Resolution (ODR) Scheme, to provide speedy and cost-effective ODR services to the general public and businesses. Hong Kong courts started to seriously review the use of technology under the new normal. We will hear from our panellists how in their jurisdictions the judiciary is catching up with the changing and challenging times and adapting to the new normal.

Capacity building for judicial officers is by no means an easy subject. We hope

that this session will provide a useful exchange on the topics so relevant to judicial qualities and enable us to explore how these messages can be further shared in diverse jurisdictions as part of the "Vision 2030" initiative.

Conclusion

I wish to take this opportunity to extend my sincere gratitude to the moderators and speakers, all of whom have kindly taken time out of their busy schedules to share with us their insights. A special thanks also to those participating online. I must also express my heartfelt gratitude to members of the Task Force on Vision 2030 for Rule of Law who are renowned members of local and international legal communities for their advice and guidance on taking the project forward. I hope with technology, through this online arrangement, we will be able to reach out to more of you. I hope to see you all online for the rest of Hong Kong Legal Week but more importantly, I hope to see you all in Hong Kong in person at the Hong Kong Legal Week 2021. Thank you very much.

Note 1: *Designing Hong Kong Limited v. The Town Planning Board & Anor.*, FACV 4/2018 (May 5, 2018), paragraph 27.

Note 2: Last year, the Global Competitiveness Report was published on October 9, 2019. This year's report has not been released as at November 3, 2020.

Note 3: "Attack against judges" was one of the issues covered in a talk by the Right Honourable Madam Justice Beverley McLachlin in December 2019 (as part of the training to judges), where Madam Justice McLachlin shared her opinion. See pages 15-23 of [www.hkcfa.hk/filemanager/speech/en/upload/2248/20191212%20McLachlin%20NPJ%20-%20Address%20to%20Judiciary%20\(final%20for%20uploading\).pdf](http://www.hkcfa.hk/filemanager/speech/en/upload/2248/20191212%20McLachlin%20NPJ%20-%20Address%20to%20Judiciary%20(final%20for%20uploading).pdf).

Note 4: Jonathan Sumption, *Trials of the State: Law and the Decline of Politics* (Profile Books, 2019)

Ends/Tuesday, November 3, 2020