



LASC I/P 02/20

## INFORMATION PAPER

### LEGAL AID SERVICES COUNCIL

#### **Speeches at the Ceremonial Opening of the Legal Year 2020**

The Ceremonial Opening of the Legal Year 2020 was held on 13 January 2020. For Members' information, copies of the speeches delivered by the Chief Justice of the Court of Final Appeal, the Secretary for Justice, the Chairman of the Hong Kong Bar Association and the President of The Law Society of Hong Kong at the Ceremonial Opening are attached at *Appendices I to IV* respectively.

File Ref : LASC 5/5/8/1

Date : January 2020

**CJ's speech at Ceremonial Opening of the Legal Year 2020**

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The following is issued on behalf of the Judiciary:

Following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, at the Ceremonial Opening of the Legal Year 2020 today (January 13):

Secretary for Justice, Chairman of the Bar, President of the Law Society, fellow Judges, distinguished guests, ladies and gentlemen,

On behalf of the Judiciary of the Hong Kong Special Administrative Region, I extend a warm welcome to everyone to this year's Opening of the Legal Year. I am grateful for the opportunity to address you on this occasion, particularly given recent events over the last seven months that have concerned every person in our community. Many questions have been raised regarding the Judiciary, many commentaries have been given as to the work of the courts and many views have been expressed regarding our judges. A lot of these have been fair, but unfortunately, some have proceeded on misconceptions and misunderstandings, and distort an objective and proper picture of the law and the legal system. Some have even bordered on the unacceptable. Given the importance of the rule of law in the community, I would like to say something this evening about the concept of justice, the operation of Hong Kong's legal system, and the duties and responsibilities placed on the courts and judges. Many of the misconceptions and misunderstandings arise following judicial decisions not to the liking of some people. I have said on a number of occasions that everyone is entitled to express their views regarding the work of the courts and one cannot of course expect approval of the result in every case. However, when attacks are made against the integrity and impartiality of the courts, or against the soundness of the legal system, or personal and highly offensive attacks are made against judges based solely on the outcome of cases, something needs to be said to inform the community about the operation of the law. The rule of law is often said to be a core value in Hong Kong and a cornerstone of its success. In order to embrace this concept, it is important to understand how the law operates and is expected to operate.

I start with the concept of justice. This is often discussed as an intangible ideal but I wish to discuss the practical meaning of this.

The Basic Law provides us with clear guidance as to what the law means to every person. It provides protection by setting out rights that enable a community to thrive, to allow members of society to live with one another, to live with dignity and to enable members of the community to provide for themselves and their loved ones.

The rights set out in the Basic Law and in our Bill of Rights (which is given constitutional backing by the Basic Law) include the freedom of speech, the freedom of association, of assembly, of procession and of demonstration. We have seen these freedoms much exercised in the past seven months. But it is important to understand that the enjoyment of these rights has limits so as not to affect adversely to an unacceptable level the enjoyment by other members of their community of their rights and liberties. I have previously referred to this as a respect for other people's rights.

Accordingly, we see clear limits in the law to the exercise of rights. The enjoyment or insistence on one's rights does not, for example, provide any excuse to harm other people or their property, or to display acts of violence. Our criminal laws provide a ready example of just where these limits lie and when called upon, these criminal laws are enforced to their full and proper extent by the courts.

The freedom of speech (called the freedom of opinion and expression in the Bill of Rights) states that the rights associated with this freedom carry with them special duties and responsibilities. Their exercise can therefore be restricted, for example, where necessary to respect the rights and reputations of others. The right of peaceful assembly is recognised but are limited in the same way as the freedom of speech. So too the freedom of association.

Therefore, the enjoyment of rights and freedoms also carries with it responsibilities and it is simply not right to think that other people's rights - or even the rights of the community as a whole - should somehow

be regarded as less important than one's own. This acceptance is a large part of what I call the concept of justice.

The administration of justice - or the practical way in which justice is dispensed in the day-to-day work of the courts - has as its central characteristic the requirement of a fair trial. Trials involve serious consequences. In the civil sphere, there may be significant personal or financial consequences arising from judgments of the court. In the criminal context, there are potentially extremely serious consequences if terms of imprisonment are imposed after conviction. A fair trial accordingly becomes essential. This is the fundamental requirement of the administration of justice and is reflected in the Basic Law. Article 87 of the Basic Law states that any person who is lawfully arrested shall have the right to a fair trial. Article 10 of the Bill of Rights reflects this by stating in terms that in "the determination of any criminal charge ... or of ... rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing".

There are many facets of a fair trial. I would like to draw attention to four such facets which have particular relevance in criminal proceedings:

- (1) First, the presumption of innocence. This is protected by Article 87 of the Basic Law which I have already referred to. This states not only that everyone is entitled to a fair trial but that there is a presumption of innocence until conviction. This is repeated in Article 11(1) of the Bill of Rights. It is one of the fundamentals of our criminal law.
- (2) Secondly, Article 11(2)(b) of the Bill of Rights states that anyone charged with a criminal offence will be entitled to have adequate time and facilities for the preparation of his or her defence.
- (3) Thirdly, every person charged with a criminal offence is also entitled to be tried without delay. This is required by Article 87 of the Basic Law and repeated in Article 11(2)(c) of the Bill of Rights. This means that criminal trials ought to take place as quickly as practicable.
- (4) Fourthly, every person convicted of a crime shall have the right to

appeal both conviction and sentence. The prosecution may also appeal.

The central requirement of a fair trial and its manifestations which I have just set out should firmly be borne in mind when viewing the activities of the courts in the light of recent events. Views have been expressed, sometimes even criticisms, along the lines that there appear to be delays in the handling by the courts of cases that come before them. As I have said many times, anyone is entitled to make criticisms and comments about the work of the courts and such are to be welcomed if improvements in the administration of justice can be made, but they must be on an informed basis. So far as the cases related to recent events are concerned, one must bear in mind the constitutional requirement of a fair trial and the facets I have earlier identified.

In a criminal case setting, the fairness of a trial means fairness to all sides, both to the prosecution and to the defence. In the vast majority - and I stress the words "vast majority" - of cases related to recent events when they first go before the courts after arrests have been made and charges have been laid, the prosecution will request for time (often amounting to several weeks if not more) in order to gather evidence, obtain legal advice from the Department of Justice as to the appropriateness of the charge laid and then to decide the appropriate level of court to try the charge, whether the Magistrates' Courts, the District Court or the Court of First Instance. At this stage, no pleas are taken and out of fairness to the prosecution, it will be allowed time to prepare its case. Once it has done so, all relevant prosecution materials will then be provided to the accused person who must also be afforded adequate time to consider and prepare his or her defence. When both the prosecution and the defence are more or less prepared, pleas are then taken and, if charges are contested, a trial date is fixed in the chosen level of court. As early a date for trial as is practicable is then given.

All the aspects of a fair trial that I have referred to earlier are relevant when dealing with recent cases, as they are in every criminal case dealt with in our courts. The court will at all times ensure that a fair trial takes place. And when accused persons have to wait for trial, the question of bail arises and in this context, the law is clear. Bail is normally to be granted unless some exceptions apply such as the risk of

flight or the risk of witness tampering. This is entirely consistent with the presumption of innocence. The approach of the courts is not to presume an accused guilty; constitutional principles mandate the opposite.

Where persons are convicted of crimes, the question of sentencing then arises. This is also an exercise based on the application of legal principle applied to the circumstances of the individual case. It is not an arbitrary exercise. Legal principle in this context includes looking to the sentencing guidelines set by the courts, in particular the Court of Appeal and due recognition given to the factors of retribution, deterrence, prevention and rehabilitation. As with all other work undertaken by the courts, sentencing involves the careful application of the law and legal principle.

And after the outcome of a criminal trial, if either the defence or prosecution is dissatisfied with the result, there is the availability of an appeal in accordance with the law.

What I have just said provides the relevant context when evaluating the work of the courts, particularly in relation to those cases which relate to recent events. While expedition is desirable, there are other factors that must be taken into account in the proper administration of justice. A fair trial does not mean that there must be a conviction or an acquittal depending on one's personal or political viewpoint: the outcome of a criminal trial depends on the evidence that is presented to the court, whether it is sufficiently cogent and whether the burden of proof (proof beyond a reasonable doubt) has been discharged by the prosecution.

I am of course aware of the volume of cases that are before the courts relating to the events of the past seven months. I have already mentioned that in the vast majority of cases, the prosecution will request for time to gather evidence and to obtain advice on the appropriate charges to lay in the desired level of court. The vast majority of cases are at this moment simply not ready for trial. That said, in order to cope with the expected high volume of cases, the Judiciary has made plans to deal with such cases (at whatever level of court) expeditiously. A task group has been set up for some time now to look into how best and how expeditiously our courts can cope with these cases. Relevant stakeholders

will be consulted on suggested measures. These include proposals to sit extended hours. I must, however, emphasise that while expedition is desirable and we will do our best to achieve this, it is important to bear in mind the overall importance of a fair trial.

The proper administration of justice depends on judges discharging the duties and responsibilities incumbent on them. This is often misunderstood. Judges do not have the duty to achieve a certain result in accordance with popular wishes, whether they be majority or minority wishes. However, they have to ensure that a fair trial takes place and to adhere strictly to the requirements of the law. This is critical to bear in mind. In the discharge of their responsibilities, judges look only to the letter of the law and to the spirit of the law, and nothing else. Political, economic or social considerations, as opposed to legal considerations, simply do not enter into the equation. If the courts have erred in their application of the law, then, as I have just mentioned, there is a system of appeals all the way up to the Court of Final Appeal.

The duties and responsibilities on judges as I have just outlined, are constitutional duties and responsibilities. The Basic Law states that the courts exercise judicial power. The exercise of judicial power means that all judicial decisions are based on the law and nothing else. Article 92 of the Basic Law states that judges are only chosen on the basis of their judicial and professional qualities. The judicial oath, which Article 104 of the Basic Law states must be taken, requires all judges to uphold the Basic Law and conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit. There can be no compromising of these fundamentals.

Included in the judicial oath is the theme of the independence of the judiciary. Article 85 of the Basic Law states that the courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. This means exactly what it says. The simplicity of the concept must not detract from its paramount importance in the way judges are required to operate and fulfil their constitutional duties and responsibilities. The task of the courts is to resolve legal disputes in accordance with the law. Everyone is subject to

the law, no one is above it. The guarantee and requirement of equality, which is also clearly spelt out in the Basic Law and the Bill of Rights, ensures that everyone, high or low, public body or citizen, are subject to the law and answerable to it. There are no exceptions. The duty on the courts to enforce the law is a constitutional requirement of the Basic Law. I can say with confidence that my fellow judges and I will discharge our duties without compromise and without fear.

An independent judiciary does not mean it is not accountable to the community. Of course the Judiciary and its judges are accountable, but it is of critical importance to understand the duties and responsibilities of our judges.

A proper understanding of the concept of justice, the administration of justice in Hong Kong and the duties and responsibilities of judges will enable anyone to comprehend and appreciate the value of the rule of law. These components of the rule of law, in particular the independence of the judiciary, are all referred to and clearly guaranteed under the Basic Law. They are also constants in the way the law operates; in good times, in not so good times, at all times.

Today marks the final occasion I will be addressing you at the Opening of the Legal Year as I will be retiring when I reach retirement age in January next year. There is still much work for me to complete but I wish to say this. It has been the greatest privilege of my professional life to be Hong Kong's second Chief Justice. I hope you will allow me to make two more points before I leave this stage for the last time. First, I want to thank sincerely and from the bottom of my heart my judicial colleagues in the Judiciary. They have over the years given me unwavering support. More important, they have done their utmost to maintain the rule of law in Hong Kong and to honour their oath, as I myself have tried to. And there is no doubt they will continue to do so under the leadership of my successor. They discharge their duties and responsibilities with dedication and courage, and they do so notwithstanding that times may be challenging and notwithstanding criticisms that may be made against them. I also want to express my deep gratitude to all staff within the Judiciary. They have likewise given me wholehearted support over the years. They have shown dedication in the

face of unprecedented challenges. I thank you all, judges and staff alike; I will miss you.

The second point is a simple message. The rule of law is rightly cherished by the community and is the foundation of a cohesive society. We must do all our best to preserve it and to treasure it because once damaged, this is not something from which our community can easily recover. I will always be committed to this. I am also fully confident that the community remains committed to the rule of law in Hong Kong.

Lastly, I wish all of you and your families a fulfilling 2020, and a happy and peaceful Year of the Rat.

Ends/Monday, January 13, 2020

Issued at HKT 18:16

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**SJ's speech at Ceremonial Opening of the Legal Year 2020**

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Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Ceremonial Opening of the Legal Year 2020 today (January 13):

Chief Justice, Members of the Judiciary, Chairman of the Bar Association, President of the Law Society, Distinguished Guests, Ladies and Gentlemen,

Rule of Law

This is a time of reflection on the past year and also to plan ahead. The state of turmoil in Hong Kong in 2019 has put us through the most difficult times. Many of the core values of Hong Kong have been under challenge and the core value closest to our hearts, the rule of law, is no exception. There are many intimations of what constitutes the rule of law – some may be described as perpetual truths and inspirational whilst others imaginative or even misleading. There are many ways by which the practice of the rule of law is to be assessed, some based on subjective perception while others on objective indicia.

Two authoritative statements inform us the correct concept:

The late Lord Bingham's inspiring book, the Rule of Law, summarised the core idea as "all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts" (Note 1).

The Declaration of the High-level Meeting of the United Nations' General Assembly on the Rule of Law at the National and International Levels in 2012 recognised that "the advancement of the rule of law is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms" (Note 2).

Given the broad perspective that the rule of law necessarily entails, I seek to highlight some of its substantive and procedural aspects.

### Substantive Aspects of the Rule of Law

As held by Lord Diplock, "[t]he acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it" (Note 3). The law must be accessible, intelligible, stable, predictable and fair for the sustainable development of any society. In Hong Kong, our legal infrastructure is set out in the Basic Law. Our legislation is in plain language and accessible at the HKeL website. Our case law is also readily accessible to the public on the internet.

Litigation inevitably involves competing rights. Yet, rights are not necessarily absolute and may be subject to restrictions. As the Court of Appeal stated in *Secretary for Justice v Wong Chi Fung and Others* (Note 4), "if the individual's rights are over-emphasised at the expense of observing the law, people will easily become self-serving, with little regard for other people's rights and the overall interests of society, so that society is prone to fall into disarray."

When disarray such as unchecked acts of violence and vandalism prevails, it will be rule of mob, not rule of law. In ordering the continuation of an interim injunction to restrain doxxing and harassment against police officers on internet-based platform, the High Court reminded that "the promotion and maintenance of the rule of law is not sensibly or rationally pursued by repeated and escalating breaches of the law" (Note 5), and "[p]ersons who commit such crimes are simply, and properly described as, 'criminals'. Criminal activity does not cease to be criminal activity simply because the actor believes himself or herself to be acting for a particular, perhaps higher, cause" (Note 6).

In *R v Caird & Others* (Note 7), Lord Sachs also held that "[a]ny suggestion that a section of the community strongly holding one set of views is justified in banding together to disrupt the lawful activities of a section that does not hold the same views so strongly or which holds

different views cannot be tolerated and must unhesitatingly be rejected."

## Procedural Aspects of the Rule of Law

Fair trial and due process are essential elements of the procedural aspects of the rule of law. The judiciary plays the pivotal role. As observed by Chief Justice Ma in the International Rule of Law Lecture of the Bar Council of England and Wales back in 2015, a transparent system of law in which the community can observe that the independent judiciary "administer[s] justice without fear or favour, self-interest or deceit", with reasoned judgments available as evidence that the adjudication is in accordance with the law and its spirit, indicates the existence of the rule of law (Note 8).

Lord Neuberger's holding on the role of the judiciary in the Brexit case completes the analysis, "In the broadest sense, the role of the judiciary is to uphold and further the rule of law; more particularly, judges impartially identify and apply the law in every case brought before the courts" (Note 9).

## Key Achievements of DoJ in 2019

In 2019, the Department continues to provide honest, independent and professional legal advice on a wide spectrum of matters to the Government so that it is fully apprised of the legal implications and acts strictly in accordance with the law. Apart from representing the Government in public law litigation and civil claims, the Department endeavours to ensure that government policies and legislative proposals comply with the Basic Law as well as other fundamental principles of our legal system. The Department also takes seriously its constitutional role of controlling criminal prosecutions, free from any interference under Article 63 of the Basic Law, and all prosecutorial decisions are made after taking into account the available evidence, applicable laws and the principles set out in the Prosecution Code. To facilitate more convenient access to the laws of Hong Kong, the Department continues to enhance the HKeL database, with more laws as verified version published on it.

On top of that, we have taken a number of new initiatives and in

the interest of time, only a few will be mentioned here.

The inaugural annual Hong Kong Legal Week was held in the first week of November 2019, with participating legal experts from over 30 jurisdictions.

This year two examples showcase the unique benefits of the "one country, two systems" policy to Hong Kong.

First, the game-changing and ground-breaking Arrangement between Hong Kong and the Mainland Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings. It capitalises on the national policy of China in its "Outline of the 13th Five-Year Plan", and recognises the difference of the "two systems" in the legal and arbitration context. This Arrangement has made Hong Kong the first and only jurisdiction outside Mainland China where, as a seat of arbitration, parties to arbitral proceedings administered by eligible arbitral institutions can apply to the Mainland courts for interim measures.

The second is the Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, which was concluded in January 2019. The scope of enforcement of this Arrangement goes beyond the Hague Judgments Convention of July 2, 2019. Once in force, Hong Kong will be the only jurisdiction where certain intellectual property related judgments would be enforceable in the Mainland.

With the support from the Central People's Government, the Department entered into a Memorandum of Understanding with the United Nations Commission on International Trade Law during the Legal Week to confirm the co-organisation of the Asia Pacific Judicial Summit on a biennial basis and to explore further collaboration.

In the wake of the promulgation of the Outline Development Plan of the Greater Bay Area, the legal departments in Guangdong Province, Hong Kong and Macao, established a joint conference mechanism in September 2019 to work on projects of mutual interest at the government level. Other initiatives of the Department include co-organising with the

Hague Conference on Private International Law the Inaugural Global Conference on the Hague Judgments Convention concluded last July, and exporting the Hong Kong brand, "Mediate First", to other jurisdictions.

The vast amount of professional work and the initiatives of the Department would not have been possible without the dedication and hard work of my colleagues for which I am most grateful.

#### New Initiatives of 2020

2020 marks the 30th anniversary for the proclamation of the Basic Law under the Constitution of the People's Republic of China. The Department will organise a conference to commemorate this.

Other new initiatives include the organisation of inter-governmental meetings and conferences to enhance our international stature.

Importantly, the Department will launch a 10-year project entitled "Vision 2030 for Rule of Law". This initiative seeks to promote the proper understanding and recognition of the rule of law by studying its various elements through research, stakeholders' collaboration and capacity building, thereby contributing to the sustainable development of inclusive and fair societies at both the domestic and international levels.

#### Closing

Given this will be the last time for Chief Justice Ma to host the Opening of the Legal Year before his Lordship's retirement in January next year, I would like to, on behalf of the Department, convey our sincere appreciation for his Lordship's contribution to the rule of law, and his efforts in retaining and attracting talent of the highest professional quality for our Judiciary to administer justice.

Last but not the least, a happy and peaceful new year to you and your families. Thank you very much.

Note 1: Tom Bingham, "Rule of Law", Penguin Books (2011), at p.37.

The late Lord Bingham insightfully explored the eight elements of the rule of law, including "accessibility of the law", "law not discretion", "equality before the law", "exercise of power in good faith", "protection of fundamental human rights", "timely and effective access to dispute resolution procedures", "fair trial" and "observance of international law". At the same time, he acknowledged the limitation of his view on the rule of law in that it may not be comprehensive and universally applicable.

Note 2: "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels" (adopted by the General Assembly of the United Nations on 30 November 2012) (A/RES/67/1), at para. 7. See also paras. 3 and 9.

Note 3: *Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] A.C. 591, 638D.

Note 4: *Secretary for Justice v Wong Chi Fung and Others* [2018] 2 HKLRD 699, at para. 110

Note 5: *Secretary for Justice v Persons unlawfully and wilfully conducting themselves in any of the acts prohibited under paragraph 1(a) and (b) of the Indorsement of Claim* [2019] HKCFI 2809, at para. 14.

Note 6: *Secretary for Justice v Persons unlawfully and wilfully conducting themselves in any of the acts prohibited under paragraph 1(a) and (b) of the Indorsement of Claim* [2019] HKCFI 2809, at para. 13.

Note 7: *R v Caird & Others* [1970] CR App R 499.

Note 8: Chief Justice Ma's speech, "Strength and Fragility in Tandem: The Rule of Law in Hong Kong", the Bar Council of England and Wales Annual International Rule of Law Lecture 2015, at paras. 16 – 22.

Note 9: *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*, REFERENCE by the Attorney General for Northern Ireland – In the matter of an application by Agnew and others for Judicial Review, REFERENCE by the Court of Appeal (Northern Ireland) – In the matter of an application by Raymond McCord for Judicial Review) [2017] UKSC 5, at para. 42.

Ends/Monday, January 13, 2020

Issued at HKT 18:55

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**Speech Given at the Opening of the Legal Year, 13 January 2020  
by the Chairman of the Hong Kong Bar Association  
Philip J. Dykes SC**

[Chief Justice, Judges and Magistrates, Secretary for Justice, President of the Law Society, Distinguished Guests from Overseas Law Societies and Bar Associations, Ladies and Gentlemen.]

1. You do not need me to tell you what an extraordinary year has just ended.
2. A fair number of you will have participated in one or more of the mass demonstrations to show discontent with the Hong Kong Government. Even more of you will have seen these protests on television screens or social media.
3. All of you will, I hope, have despaired when you saw serious violence breaking out, which saw some people attacking and injuring others whilst others committed acts of criminal damage. Such activities cannot come within the exercise of the right of peaceful protest.
4. There will be a reckoning later this year for some people. The police have arrested several thousand people coming from all walks of life. The arrested persons are predominantly young. Some are just school children. Many more are university students. However, many were ordinary workers and others had stopped work long ago and entered retirement.
5. Some of these people now face serious charges which carry substantial terms of imprisonment. Many though have been charged with lesser public order offences, not involving violence or extreme vandalism. They are all of them, in the main, of good character. They are representative of a large section of Hong Kong society.
6. It is not for me to advise the Secretary for Justice about who she should prosecute and for what offences. Article 63 of the Basic Law says that the Department of Justice controls criminal prosecutions 'free from any interference'.
7. However, the Prosecution Code published by the Department of Justice reminds us that a decision to prosecute is not made just because the police have enough evidence to go to court and secure a conviction. Public interest plays a part in the decision-making process too so that individuals or some classes of cases will not end up in court, even though there is a strong case against them.

8. To some people a decision not to prosecute when there is evidence that would secure a conviction may appear odd and at variance with the rule of law which some think calls for a prosecution whenever the law appears to have been breached. That is an incorrect understanding.
9. The prosecutor's looking beyond the four corners of a charge sheet to other matters, both personal to the person charged and to other matters, is a part of the rule of law. In 2006 the Court of Appeal described this prosecutorial independence and the ability to look at the overall merits of a case before deciding as constituting 'a linchpin of the rule of law' (In Re C (A Bankrupt) [2006] 4 HKC 582.)
10. I believe that there will surely be a winnowing of cases going forward to prosecution. There will still be many hundreds of cases, if not thousands. They will have to be processed through the courts by judges and magistrates with lawyers from the Department of Justice, the Bar and the Law Society playing a necessary part as either prosecutors or defence representatives.
11. It will be a formidable task. I would hope that the new Bar Council will look to ways in which it can help in encouraging members to provide their services in future trials. That may mean reminding some members who have not practised criminal law in a long time that they should brush up their skills and be prepared to help out in court so that fair trial rights which apply to both the prosecution and defence may not be jeopardised.
12. At this stage, I should pay tribute to the barristers who, working together with members of the Law Society, have provided legal assistance at police stations and magistrates' courts to persons arrested for public order and other offences.
13. One day would see scores of arrests and people taken into police custody and the next day would be the same. Police stations often could not accommodate the detainees, and their subsequent dispersal to other police stations and detention facilities presented members with significant challenges to track down their clients and see them. Later on, these barristers would be in court with the arrested persons, in some cases waiting until eight or nine o'clock at night before their clients' cases came on.
14. Only by the brilliant organisation of some, and the enthusiasm and hard work of all concerned, could the arrested persons' constitutional right to see a lawyer and be represented be made safe.
15. When, later on, these cases arrive in court for trial, there will be decisions that are bound to please or disappoint the participants, as well as persons following the cases. Sometimes stronger emotions are aroused.
16. We have seen judges abused and vilified only recently. This reaction has been because a verdict or sentencing decision had not met the expectations of people outside the judicial process who have a view on what should be the 'correct' disposal of a case.

17. The Chief Justice has said it before now, but it needs repeating: Judges do not try people differently because of the defendant's political or other beliefs. If they did that, they would not be true to their oaths of office which bind them to do justice without fear or favour, self-interest or deceit.
18. I wish that the words of US Supreme Court Justice Samuel Alito were more widely known and, more importantly, accepted which are: "*A judge can't have any preferred outcome in any particular case. The judge's only obligation - and it's a solemn obligation - is to the rule of law.*"
19. Similarly, barristers are not allowed to let personal prejudices get in the way of providing representation to persons seeking to use their services. We have a rule in our Code of Conduct that we call the 'Cab Rank Rule'. It requires barristers to act in any case in the area of law in which they practice in return for the usual fee. They must act irrespective of what they make of the client's character or their beliefs.
20. The Cab Rank Rule is, regrettably a rule that, like most regulations, dull to read but an English barrister from the Eighteenth Century, Thomas Erskine, stated the essence of the rule in a scintillating speech when he defended Thomas Paine in 1792.
21. Thomas Paine was a radical. He wrote a book which suggested that it was lawful for a people to overthrow a government which failed to protect their natural legal rights, such as freedom of thought, assembly and speech. The Attorney-General charged him with sedition. That is to say with exciting disaffection and hostility against the Government of the day.
22. Other barristers attempted to persuade Erskine not to take up the case because Paine was poison to the Government. Defending him would blight his chances to do Government work because he would be forever associated with Paine and his politics.
23. Erskine later told the jury about the pressure he came under from his fellow lawyers not to defend Paine.
24. "From the moment that any advocate can be permitted to say that he *will* or *will not* stand between the Crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end."
25. Erskine lost the case, but his stubborn and principled defence of Paine so enhanced his reputation as a barrister who championed independence that 14 years later, he became the Lord Chancellor.
26. The principle encapsulated in that part of Erskine's speech holds good today here and now. Barristers will continue to defend unpopular clients and causes not because they necessarily want to but because it is their professional duty to do so.

27. I should not like the Bar have to comment again on any other incidents like the one which occurred last September when a crowd hounded a prosecutor in the High Court building for doing his job in opposing a bail application made by a young person arrested during the protests.
28. In 1990 the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a document called 'Basic Principles on the Role of Lawyers'. Paragraph 18 states that 'Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.' That principle needs to be understood and accepted too.
29. These are some of my misgivings for the year to come. I hope that they do not come to pass. If they do, I believe I can assure the Chief Justice that the Bar will, as always, assist in helping the Judiciary discharge its solemn responsibilities under the Basic Law.
30. I wish you all better fortune in the Year of the Rat.

Philip J. Dykes, S.C.  
Chairman  
Hong Kong Bar Association

January 2020

**SPEECH OF MELISSA K PANG  
PRESIDENT OF THE LAW SOCIETY OF HONG KONG  
AT THE OPENING OF THE LEGAL YEAR 2020  
13 JANUARY 2020**

Chief Justice, Secretary for Justice, Chairman of the Hong Kong Bar Association, Members of the Judiciary, Members of the Legal Professions, Distinguished Guests, Ladies and Gentlemen,

**Opening of the Legal Year**

On behalf of the Law Society of Hong Kong and our members, I extend a warm welcome to all our guests who attend this Opening of the Legal Year ceremony. Some of our guests may have attended this ceremony routinely for decades. For some, it may be the first year they attend this ceremony. They may wonder why this parade of our distinguished judges all robed with medieval costumes. If you come to this hall thinking that you are attending a fashion show, a drama or an opera, you may like to have your money back at the ticket office outside. I am not sure whether our judges have good fashion sense or whether they sing well, but what I know is that our judges have good sense of justice and they pronounce independent and sound judgments.

I have been reflecting on the purposes of the Opening of Legal Year ceremony and I come to realise that this ceremony serves a very important purpose of sending a strong message to our community that our judiciary is fiercely and totally independent and its integrity is beyond doubt. Our judges do discharge their duties in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit. For that, they deserve our greatest respect.

Judicial independence is one of the fundamental core values in our civic society. It is also one of the fundamental attributes of a society who is governed by the Rule of Law. I can proudly say to the public, our community at large and our international community that our judiciary is totally independent. Our citizens must appreciate that our judges decide cases according to the Law, not according to any, I emphasis the word "any", extrinsic factors, or "any" colour codes also known as political views nowadays. Baroness Hale recently warns against the UK from

adopting a US style Supreme Court. I cannot agree more. This is the time to tell the public that politically our judiciary is colour-blinded.

Nonetheless, our judiciary deserves our citizens' protection when under unfair attacks. Of course, members of our profession have a non-delegable duty to defend our judges when they are unfairly attacked, but what is more important is that our citizens must appreciate that it is equally their duties to defend our judiciary. Some may not like the outcome of the decisions of judges. We have appellate bodies. Rational and healthy criticisms are welcome. But any unfair and unfounded attacks purely according to outcomes and political views cannot be tolerated. On 4 July 2018, the Law Society and the Bar Association jointly issued a statement and I quote:-

"The Law Society of Hong Kong and the Hong Kong Bar Association urge members of the public to express their views in a manner conducive to rational debate. Personal attacks on judges have no place in rational discourse and debate that is a hallmark of a civil society."

More recently, on 2 January 2020, the Law Society of Hong Kong and the Hong Kong Bar Association had to issue yet another public statement and I quote:

"Any attempt to insult, threaten and bring public pressure on a judge because of decisions made in the course of performing judicial duties is to be deplored as an affront to the rule of law and judicial integrity."

In Hong Kong, we are fortunate to have a sound legal system and an independent judiciary for our practitioners to deliver their professional services. It is our duty to defend our valued system and its reputation.

### **Obedience of the Law**

Distinguished speakers have spoken time and again on the importance of the Rule of Law, I should not repeat the same save that I would like to point out an obvious fallacy that one can uphold the Rule of Law without obedience of the Law.

It might seem trite that obedience of the Law is non-negotiable and uncompromisable. Arson and injuries to persons can hardly be justified on whatever political basis. Another fundamental core value in our community is respect of others' personal and property rights. With utmost

respect, civil disobedience is no licence to arson, damage to citizens' properties and injuries to persons. Lest it be forgotten that obedience of the Law, safeguard of the Law are not only our duties, but our core values unless we want to resort to some medieval methods of dispute resolution, for example, trial by combat. Every willful disobedience of the Law is an erosion on our Rule of Law. I do not subscribe to the view that the Rule of Law will not be affected if those who committed arson and injuries to persons are willing and would eventually pay the price by going to prison. Humanity dictates however strong we may disagree with others' political views, in a civilized society, we cannot resort to violence to silence different views.

### **Openness and Internationalism**

Hong Kong is a small city but it is big enough to embrace different views and values. Madame Roland, a French revolutionary, once famously said "O freedom, O freedom, what crimes are committed in your name!" Basic human decency dictates that we cannot persecute others simply because they take a different political view. We must be guarded against the ironical trap of infringing others' freedom in the pursuit of our own freedom.

Hong Kong is still a most open and free society. Hong Kong consistently ranked number one in the Index of Economic Freedom by the Heritage Foundation. In terms of legal services, Hong Kong's legal market, in particular, the solicitors' stream, is extremely open and international. We warmly welcome foreign law firms to set up their offices in Hong Kong. As at the end of 2019, we have 91 registered foreign law firms and 1,688 foreign lawyers from 33 jurisdictions. 106 overseas lawyers were admitted in 2018 as Hong Kong solicitors through passing the Overseas Lawyers Qualification Examination. Hong Kong is designated to be an international legal hub in our region. I am confident that with the quality and integrity of our professional members, the Judiciary and the legal community, Hong Kong will meet its challenges and continue to contribute to humanity by being a passionate and yet rational society.

In the beginning of the year 2020, I would like to take the opportunity to wish you all have a 2020 vision for all your endeavours and a very prosperous and healthy new year. Thank you!