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INFORMATION PAPER

LEGAL AID SERVICES COUNCIL

Speeches at the Ceremonial Opening of the Legal Year 2024

The Ceremonial Opening of the Legal Year 2024 was held on 22 January 2024. 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.

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Date : January 2024

CJ's speech at Ceremonial Opening of Legal Year 2024

The following is issued on behalf of the Judiciary:

Following is the full text of the speech delivered by Chief Justice Andrew Cheung Kui-nung, Chief Justice of the Court of Final Appeal, at the Ceremonial Opening of the Legal Year 2024 today (January 22):

Secretary for Justice, Chairman of the Bar, President of the Law Society, Fellow Judges, Distinguished Guests, Ladies and Gentlemen,

On behalf of the Hong Kong Judiciary, I extend a warm welcome to all of you to the Opening of the Legal Year. This eminent annual ceremony highlights for our community the administration of justice and the rule of law, which forms the bedrock of Hong Kong's continued prosperity and success under the "one country, two systems" arrangement.

Under the Basic Law, Hong Kong remains a common law jurisdiction, an arrangement which was reaffirmed as a long-term state policy by President Xi during his last visit in 2022. The advantages and benefits in continuing with the common law system in Hong Kong are clear.

The common law system is a system that has shaped and informed legal frameworks of jurisdictions from otherwise very different cultures and traditions. At the core of the common law system lies a steadfast commitment to the principles of fairness and equality. The doctrine of precedent, unique to the common law system, mandates that like cases be treated alike, thereby not only ensuring consistency and predictability in the decisions of the courts, but also promoting public confidence in the judicial process. At the same time, the common law's strong emphasis on rigorous analysis and analogical reasoning, coupled with the willingness to revisit and challenge established concepts and paradigms where circumstances require, enables the common law to respond and adapt to the rapidly and constantly changing world. As has been observed by others, the common law's pragmatism, flexibility, adaptability and capacity for innovation are essential qualities that allow the legal system to rise to challenges and meet the present day needs and demands of society.

Moreover, the common law system has functioned in Hong Kong for over 180 years. It is the legal system that the people of Hong Kong are familiar with and place their trust in. Neutral and impartial judges, the adversarial mode of litigation, the presumption of innocence, the guarantee of due process, proof beyond reasonable doubt, equality before the law, to name just a few examples, are entrenched features of our justice system that the people of Hong Kong are accustomed to, which gives them peace of mind.

The common law system is also a system which many of Hong Kong's international business and trading partners and investors are intimately familiar with, regardless of their backgrounds and whether their home countries are common law jurisdictions or civil law regimes. English, the language of the common law, is the common international language used by the world over in international business and dealings. The use of English (alongside Chinese) in our court proceedings and judgments therefore helps ensure the judicial process is readily understandable to those from outside and inspires confidence in our system. Indeed, it is noteworthy that many of the major international dispute resolution hubs, Hong Kong included, are common law jurisdictions.

In support of its legal system, Hong Kong has a vast pool of talented and experienced common law lawyers to call upon. Many are trained locally, but Hong Kong is also home to a significant portion of lawyers who were educated abroad, including some of the best law schools from other jurisdictions. The continuation of Hong Kong as a common law jurisdiction therefore fully leverages upon the talents readily available in Hong Kong, and also serves to attract even more legal talents from abroad to join Hong Kong's market for the provision of legal services.

Most importantly, the continuation of the common law system is a remarkable accomplishment for our country and Hong Kong itself, as the embodiment of the successful implementation of the "one country, two systems" arrangement. It highlights the uniqueness of Hong Kong as a Special Administrative Region of our country – indeed the Hong Kong Special Administrative Region is the only common law jurisdiction within an otherwise civil law country. It demonstrates the abiding confidence that the Central Government places in the Hong Kong Special Administrative

Region as a distinct legal jurisdiction underpinning a capitalist society, and this in turn fosters public and international confidence in the continued success of Hong Kong after 1997. The continuation of Hong Kong's common law system, with its unwavering commitment to the rule of law and judicial independence, is therefore vital to the continued success of the "one country, two systems" policy.

Given the importance of the successful continuation of the common law system in Hong Kong, what are the critical components of the system that require our continued vigilance? From the perspective of the Judiciary, I would like to highlight some matters that we should pay particular attention to.

Central to the common law system as practised in Hong Kong are its courts and judges. Judges not only decide cases, but also create legal precedents. Not only do their decisions represent the outcomes of the immediate cases before them, but they also guide and even govern how subsequent cases involving similar facts and issues are to be determined. Whilst statutes are enacted by the legislature, their interpretation and application are in the hands of the courts. The interpretation that the courts give to a piece of legislation becomes a binding law in itself, affecting the results of future cases.

We must therefore recruit and retain the best legal and judicial talents to sit in our courts. A rather unique feature of the common law system is that apart from internal promotion, judges are recruited from the ranks of experienced legal practitioners. For our legal system to function smoothly, the cream of our legal profession must be prepared to seriously consider joining the Bench when the occasion arises. No doubt that would involve making personal and financial sacrifices. Life as a judge is busy, challenging and at times stressful and lonely. But at the same time, it is decidedly meaningful, and can also be truly satisfying and rewarding. It is not a job for everyone; indeed, it is more than a job. It is a calling which awaits answering by those who are public spirited – those who seek a meaningful way to give back to the legal system that has provided them with the opportunity to succeed and thrive in practice.

In the recent recruitment drive for the District Court Bench, we have seen very encouraging responses from the middle-ranking members of the legal profession. I hope, for the sake of the long-term sustainability of the common law system in Hong Kong and the work of the Judiciary in particular, that senior members of the legal profession will be just as (if not more) enthusiastic in applying to join the High Court Bench as their junior members apply to become district judges.

The wider community must also deepen its understanding of our common law system in order to make it work. When courts make decisions that are controversial or not to the liking of some, it is perfectly acceptable for members of the community to comment on or criticise the judges' decisions or their reasoning. If a decision happens to be against the government, it is wholly legitimate for the government to take the matter to the appellate court, just like all other litigants. What is not conducive to the success of our common law system is to fail to distinguish between the judge personally and his or her decision or reasoning. Criticising the judge's decision or reasons is one thing; questioning the judge's integrity or professional impartiality is quite another. Likewise, a failure to separate a court decision from the Judiciary as an institution is not helpful to the well-being of the common law system. When a court makes an unpopular or even wrong decision, it does not follow that the justice system or the Judiciary is malfunctioning or requires some reform and changes. The existence of the multi-tiered appeal process in our court system is an acknowledgement that sometimes reasonable men or women may differ in views and errors may be made. The system of appeals exists precisely to rectify errors and clarify legal issues.

Judges must be able to decide cases and explain their decisions in judgments without interference or illegitimate pressure. This is of cardinal importance to judicial independence. Threats of sanction or reprisal against judges for simply discharging their judicial duties are, therefore, repugnant to the rule of law and fundamentally objectionable. Cases decided by the courts in the past year or two, including split decisions by the Court of Final Appeal, have plainly demonstrated that our judges are highly professional in their work, independent in their thinking and faithful to the law. It does not mean that their decisions are not open to criticism or disagreement. Nor does it mean that their decisions are immutable. In this regard, it has to be

remembered that although the common law comprises judge-made law, it embraces the supremacy of the Constitution and subject to that, the sovereignty of the legislative body. In practice, this means that all case law, except that which concerns constitutional issues or fundamental rights, is liable to be changed by the legislature. Indeed the statute book is replete with examples of case law being modified, changed or reversed by the legislature. This is how our common law system under the Basic Law is designed to work.

On the Judiciary's part, the strengthening of the work of the Judicial Institute which is overseen by an executive committee chaired by the Chief Judge of the High Court and carried out under the leadership of a professional executive director, is of strategic importance. The Judicial Institute provides training to new judges as well as continuing education and training to experienced judges. Not only does it cover the dissemination of knowledge in specific areas of law, but it also includes induction training, court craft, judicial ethics and conduct, stress management and judicial wellness, comparative legal studies (including the laws and legal system on the Mainland), visits and exchanges, amongst other topics. It is trite that the more judicial manpower that is available to hear cases and discharge judicial duties, the more "protected time" we can allocate to our judges to undergo judicial training, and the better trained our judges will become, all to the benefit of Hong Kong's common law system.

Hong Kong's common law system will only continue to flourish if it is capable of coping with the cases that come before its courts effectively and efficiently. Apart from increasing the judicial workforce and improving its quality, an efficient court system that effectively administers justice is essential. To this end, I have mentioned on previous occasions the Judiciary's drive to turn our litigation process and related services from a paper-based system to an essentially electronic one. In this regard, the electronic system (generally known in the abbreviated form as iCMS) has already been smoothly implemented in most civil proceedings in the District Court as well as the summons cases in the Magistrates' Courts. Its extension to other levels of courts, most importantly the High Court level, where the bulk of our heavy civil litigation is handled, is scheduled for this year. We have received very positive initial responses from the two legal

professional bodies to our target to make the use of the electronic litigation platform mandatory by all represented litigants by 2026. To that end, we issued earlier this month a consultation paper to all stakeholders on our proposals and implementation details.

This apart, the Courts (Remote Hearing) Bill will be placed before the Legislative Council later this year, which if and when enacted, will afford the courts even greater flexibility to conduct hearings remotely, without compromising the quality of justice and the requirement of open justice.

Continuing with the topic of improving the efficiency and effectiveness of the judicial system, I am pleased to say that the new District Court project is proceeding on schedule. The new District Court complex in Causeway Bay will be completed and open for use by 2027. As for the new High Court project, we are grateful to the Chief Executive for agreeing to designate the Queensway Government Offices site literally next door to the current High Court Building, for the construction of a new High Court complex. Importantly, the Judiciary will also keep the existing site of the High Court as part of the new High Court site. This joint site, which has a substantially larger permitted gross floor area than that of the previous sites originally offered to the Judiciary, will enable the new High Court complex to be even more satisfactorily located and designed. Given the long symbolic association of the present location of the High Court with the administration of justice in Hong Kong, there is no site which is more suited to housing a new High Court complex. As I said, we are grateful to the Chief Executive for agreeing to let the High Court remain on and expand at its current location. It is an important investment in the future of the rule of law for our next generation. Of course, a new building can only be erected after the current occupants of the Queensway Government Offices have relocated to their new offices, and the existing High Court Building can only be demolished after the construction of a new one next door has been completed. However, preliminary planning and design work need not wait and indeed will be started very soon.

Finally, in discussing Hong Kong's common law system, it is imperative to touch upon national security cases. Under Article 3 of the Hong Kong National Security Law, the Judiciary has a duty to effectively prevent, suppress and impose punishment for any act or activity

endangering national security in accordance with law. The Judiciary takes this duty seriously. Of course, this does not mean that the courts will blindly convict all defendants or mete out the heaviest punishments possible on conviction. Rather, the courts will fully respect all fundamental rights, as required by Articles 4 and 5 of the National Security Law, in administering justice strictly and fairly in accordance with the provisions of that Law as well as other applicable laws. The courts will not yield to any pressure to convict or acquit, nor pay heed to harassment or threats of any kind. Just like all other types of criminal cases, where guilt is proven, conviction and punishment will follow accordingly. Where it is not so established, a defendant will be set free. If an error is made or is said to have been made and an appeal is brought, the appellate courts will carefully review the decision below in accordance with the law and procedure applicable. This is how our justice system has always, and will always, work.

In the past few years, the work of the Judiciary has often been viewed through the prism of the National Security Law. This way of looking at things necessarily results in a very narrow or even distorted picture of the breadth and width of our judicial work, and more generally, the state of the rule of law and judicial independence in Hong Kong. But whatever may be said or written about our legal system, of this the community can be sure : our courts and our judges will continue to discharge their constitutional duty to administer justice fairly and efficiently, without fear or favour, self-interest or deceit. This, too, is essential to the continuation of the common law system in Hong Kong.

It only remains for me to wish you and your families good health and much happiness in the new year. Thank you.

Ends/Monday, January 22, 2024

Issued at HKT 18:30

SJ's speech at Ceremonial Opening of Legal Year 2024

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the Ceremonial Opening of the Legal Year 2024 today (January 22):

Chief Justice, members of the Judiciary, Chairman of the Bar Association, President of the Law Society, distinguished guests, ladies and gentlemen,

To begin with, I am sure we are all very delighted at the attendance of fellow judges, legal professionals and friends from not just Hong Kong but also the Mainland and overseas at today's ceremony, many of whom were prevented from attending this important annual event in the last few years due to the pandemic. In 2023, Hong Kong has emerged from the pandemic; and is now advancing from stability to prosperity. The future of Hong Kong hinges on the thorough and accurate implementation of the "one country, two systems" principle. The fundamental purpose of this principle is to safeguard China's sovereignty, security and development interests and to maintain the long-term prosperity and stability in Hong Kong. To achieve this purpose, Hong Kong must maintain its distinctive status and advantages.

One distinctive and irreplaceable characteristic of Hong Kong is undoubtedly its common law system with strong international elements, which enjoys an exemplary reputation around the world. An essential component of this common law system is the Judiciary which is given independent judicial power, including that of final adjudication by the Basic Law. Today's ceremony provides the most pertinent opportunity to pay tribute to the indispensable role played by the Judiciary to the successful implementation of the principle of "one country, two systems" in Hong Kong.

Without security and stability, there cannot possibly be prosperity. To safeguard our country's sovereignty and security, the Judiciary is under a constitutional duty to effectively prevent, suppress and impose punishment for any act or activity endangering national security. The Judiciary discharges such constitutional duty by exercising its judicial power independently whenever national security issues are raised before the court. In particular, it is duty-bound to ensure that defendants charged with

national security offences will receive a fair trial; and that their guilt will be determined in accordance with the relevant law and evidence only, nothing more and nothing less. It is, therefore, of utmost importance to ensure that the Judiciary will in fact be able to exercise its judicial power without any interference in national security cases as in any other types of cases.

The best way to test whether the Judiciary has been able to do so is to ascertain how and on what grounds the court decided those cases. All court hearings relating to national security are, generally speaking, held openly. More importantly, all decisions and judgments made by the court in this respect are publicised on the Judiciary's website, which is accessible for free. People will have no difficulty in following the court proceedings, and studying the reasons for the court's decisions and judgments. The real problem is that many people did not bother to do so before passing their own judgements. For any reasonable and objective bystander who is eager to seek the truth, he or she will not see one iota of evidence that the Judiciary's independent judicial power has been compromised in cases involving national security.

That said, we must be mindful of the unfortunate fact that there were, and will likely be, threats to the Judiciary's independent judicial power from other countries. For instance, in November last year, politicians in a western country (and their supporters) proposed to impose sanctions on Judges and Judicial Officers handling national security cases. Such political manoeuvres appear to aim at achieving two purposes: first, to smear the national security law applied in Hong Kong and, second, which is even more sinister, to exert pressures on our Judges and Judicial Officers, trying to deter them from taking part in national security cases or influence them on how they would handle such cases.

The HKSAR (Hong Kong Special Administrative Region) Government responded immediately by issuing a strong statement to condemn such act, which constituted a blatant attempt to damage the rule of law in Hong Kong. The Central People's Government, the Judiciary itself and other sectors of the Hong Kong society issued similar statements. Insofar as those people making or supporting the above-mentioned or any similar threat claimed that they are concerned about the rule of law in Hong Kong, one cannot

imagine a higher degree of hypocrisy.

We should be grateful to, and proud of, our Judges and Judicial Officers who have continued to do their jobs faithfully in accordance with the Judicial Oath, as is always the case. Indeed, the best way to handle any such improper interference is to stay calm and composed, carrying on with our respective duties; and at the same time, to maintain and promote the transparency of the judicial process. I wish to make it very clear that the HKSAR Government will do its best and take whatever measures within its powers to ensure that Judges and Judicial Officers will be able to perform their judicial functions without fear from intimidation.

Turning to safeguarding the development interests of China, and to maintain the long-term prosperity and stability of Hong Kong, the HKSAR Government and the Judiciary have been working closely to enhance Hong Kong's status as an international legal and dispute resolution services centre. While it is essential to maintain a clear demarcation between the legal system of the Mainland and that of Hong Kong, it is necessary to construct linkages between the two systems so that the unique advantages offered by Hong Kong's common law system may be fully utilised to serve the national interests of China as a whole. This is achieved by, among other things, the conclusion and modification of different types of mutual legal assistance arrangements in civil and commercial matters between the Mainland and Hong Kong. For example, to implement the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance enacted in October 2022, together with its subsidiary rules and Practice Direction, will come into operation next Monday on January 29, 2024. This arrangement is similar to The Hague Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters but its scope is even wider such as, for example, it includes some intellectual property judgments which are completely excluded from The Hague Convention. Another example is that the Supreme People's Court of the PRC (People's Republic of China), the Judiciary and the Department of Justice are working hard to revise the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts which was concluded back in 1999 in the

hope that a better arrangement could be concluded in the early part of this year.

Fellow residents in Hong Kong will repose trust and confidence in our judicial system only if it is affordable and able to resolve legal disputes within a reasonable time. One big challenge faced by the Judiciary is its heavy workload. To reduce its workload and to encourage people to resolve their disputes in a more effective and economical manner, the Judiciary has been promoting mediation vigorously. To support the Judiciary in this respect, one of the policy initiatives set out in the Chief Executive's 2023 Policy Address announced in October last year is to deepen the mediation culture. To be more specific, the HKSAR Government intends to strengthen the regulatory system on the accreditation and disciplinary matters of the mediation profession, incorporate standard mediation clauses in government contracts, and encourage private organisations to incorporate similar clauses in their contracts.

Regarding mediation, it is worth mentioning that China is negotiating with a number of countries on the establishment of an International Organization for Mediation. In last November, upon the HKSAR Government's express of interest, the Central People's Government supported and submitted a bid to the International Organization for Mediation Preparatory Office to host the International Organization for Mediation headquarters in Hong Kong by converting the Old Wan Chai Police Station to such purpose. It is expected that a decision will be made early this year at the earliest.

The need to maintain and promote people's trust and confidence in our legal and judicial system has become more acute when false and misleading allegations appear from time to time in this respect, very often prompted by the complex and volatile geopolitics. We must bear in mind that people's trust and confidence must be founded upon a sufficient and proper understanding of how our legal and judicial system actually operates. For this reason, in the coming year, the Department of Justice will continue the work of the Steering Committee on Rule of Law Education, including the launch of the second phase of the Rule of Law Education Train-the-Leaders Programme.

I said all these things to make one important point. Owing to the fact that the HKSAR Government and the Judiciary play different roles under our constitutional order, as well as the need to maintain the Judiciary's independent judicial power both as a matter of reality and perception, there must be a separation between the two. But such separation must not mask the fact that we are close allies in defending, maintaining and promoting the rule of law in Hong Kong, enhancing people's trust and confidence in our legal and judicial system, and ensuring that Hong Kong's common law system can achieve the fundamental purpose of the principle of "one country, two systems".

The rule of law in Hong Kong is attributed substantially to its judiciary, which enjoys an excellent reputation that it well deserves. It is not only a good, but also true, Hong Kong story. It is a good and true Hong Kong story based on objective facts. It is a good and true Hong Kong story that must continue. Notwithstanding challenges ahead that we must not underestimate, I wish to call upon all of you who care about and love Hong Kong (whether Judges and Judicial Officers, Government Counsel, private practitioners and other interested parties) to co-author an even better chapter of this good and true Hong Kong story with confidence and solidarity.

Last but not least, as we are going to celebrate the Chinese New Year of the Dragon in about two weeks' time, may I take this opportunity to wish you and your families a happy and healthy Year of the Dragon!

Ends/Monday, January 22, 2024

Issued at HKT 18:35

Speech by Victor Dawes SC, Chairman of the Hong Kong Bar Association at the Ceremonial Opening of Legal Year 2024

Chief Justice, Secretary for Justice, President of the Law Society, Judges, distinguished guests, ladies and gentlemen,

Welcome and the year in review

1. On behalf of the Hong Kong Bar Association, a very warm welcome to this Ceremonial Opening of the Legal Year. We are particularly grateful to those who have travelled to Hong Kong from other jurisdictions for this special occasion.
2. Today's gathering is a strong reflection of a precious reality: the ongoing commitment of so many to the rule of law and the administration of justice in Hong Kong. The continued wellspring of support and dedication – to the rule of law, to our legal system, and to our way of life – is highly valued and indeed never to be taken for granted. This is a strong anchor in currents of challenges and change.
3. The past year has indeed seen remarkable currents of global economic uncertainty; ongoing international armed conflicts; social conflicts and distrust within many communities across the world; and the rapid advancement of generative artificial intelligence. With these challenges come distinct needs and

opportunities for closer co-operation within the international legal community. Cross-jurisdictional understanding and co-operation are more important than ever.

4. Thankfully, 2023 was a year where Hong Kong was finally able to leave the pandemic behind and reconnect afresh with the Mainland and the rest of the world.
5. 2023 was also a year where our judges and members of the legal profession once again demonstrated their strong commitment and capacity to serve the people of Hong Kong.

Decisions of our courts

6. I shall begin by taking you to the work of our apex court, the Court of Final Appeal. As always, the matters heard by the Court over the past year have involved complex questions of law intertwined with wider social and political issues.
7. In the limited time available, I will highlight 2 examples of the ongoing commitment of our Courts in safeguarding the fundamental rights of the people of Hong Kong. As always, the Court has sought to discharge its critical role as guardian of the rule of law while and steering clear from matters that belong properly to the political or governmental arena.

8. In the case of *Sham Tsz Kit v Secretary for Justice*, which concerned issues around same-sex marriage in Hong Kong, the Court did not decide on the general question of whether same-sex marriage should be recognised in Hong Kong, making it clear that this is a matter of public policy. The Court confirmed that Article 37 of the Basic Law protects the right to marry in terms of opposite-sex marriage and not same-sex marriage, and that specific constitutional provision addressing marriage was one that prevails over general provisions such as Article 25, which states in general terms that all Hong Kong residents should be equal before the law.
9. At the same time, by a majority, the Court held that the Government was in breach of its positive obligations under Article 14 of the Hong Kong Bill of Rights in failing to provide same-sex couples with an “*alternative framework conferring legal recognition on their relationship in order to meet basic social requirements and to provide them with a sense of legitimacy, dispelling any sense that they belong to an inferior class of persons whose relationship is undeserving of recognition*”.
10. The Court’s carefully balanced and articulated decision has been welcomed not only by scholars and activists but also by the international business community in Hong Kong.

11. Moving onto criminal law, the longstanding vigilance of our Courts in protecting freedom of speech and the press against unwarranted or disproportionate interference is well illustrated by the decision of ***Choy Yuk Ling*** in the Court of Final Appeal. There, the journalist in question successfully overturned a conviction of making a false statement when she applied for a Certificate of Particulars of a vehicle involved in an alleged crime when seeking to gather evidence for the purpose of investigative journalism.

12. Again, the careful and clear approach of the Court in protecting the freedom of speech and of the press enshrined in Article 27 of the Basic Law and Article 16 of the Hong Kong Bill of Rights was very much welcomed by the legal profession and journalists in Hong Kong.

13. It would be remiss of me here if I did not pay tribute to Derek Chan SC, one of our Vice-Chairmen, for appearing *pro bono* for the appellant in ***Choy Yuk Ling*** when the case reached the Court of Final Appeal. This and other instances of members of the Bar acting *pro bono* or in the independent role of *amicus* in important cases before the Courts over the past year stand as valuable examples to the public and our junior members of the best traditions of the Hong Kong Bar, and in particular our core values

of independence and integrity in service to the community.

14. The Secretary for Justice will forgive me for only referring to the two decisions where he was on the losing side. In fact, a Government Minister once asked me if the state of our rule of law is measured by how many cases they have lost. I said this is certainly not how I would put it. But what is true is that decisions like those just referred to vividly illustrate the way in which our apex court, like all Courts in Hong Kong, exercises its independent power of adjudication in resolving the disputes in ways that are just and legally sound, and which reaffirms the core tenet that all of us in Hong Kong are and must remain equal before the law.

Sub judice

15. It will come as no surprise that there are those who were unhappy with the decisions I mentioned. This is entirely natural when it comes to decisions featuring both complex and controversial issues of public concern. And as always, it is worth reiterating that, while there exists ample room for debate over court decisions, it is very much in the interest of the justice system and public interest as a whole that these debates – and any criticisms made within them – be informed and grounded by proper reasons.
16. Put simply, it is misguided and wrong to sit in judgment of the judicial process based on either one's liking or dismay of the

outcome of a particular case without regard to the reasons given by the Court for a particular result, and the process by which that result was reached.

17. Relatedly, it is a worrying trend when anyone chooses to pay no regard to the *sub judice* rule when seeking to express opinions on ongoing cases and decisions of our courts.
18. The *sub judice* rule prohibits reference being made by the public to a case pending or under consideration by a court of law which might carry a real risk of prejudice to the case. There need not be actual prejudice. The rule applies as long as there is a “real risk” of prejudice.
19. For criminal proceedings, the *sub judice* rule applies once a person is arrested, a warrant or a summons has been issued. The temporal scope of the rule extends until the determination of guilt of the defendant.
20. The *sub judice* rule exists to protect the defendant’s right to fair trial, a fundamental right enshrined in Article 87 of the Basic Law and Article 10 of the Bill of Rights Ordinance. It also exists to maintain public confidence in the legal system. I urge all members of our community to exercise caution and restrain when exercising their freedom of expression in commenting on ongoing cases.

The Bar in 2023

International Engagement

21. Moving onto the work of the Bar Association - 2023 has certainly been an eventful year. Moving away from the pandemic years, we have focused on reminding the world of the ongoing importance of the strong and independent Bar in Hong Kong, and raising awareness in the Mainland of the distinct strengths and value of the independent Bar and the legal system in Hong Kong.
22. On the international front, together with our 2 Vice Chairmen and numerous members of our council, we had the privilege in the past year of representing the Bar and speaking at international conferences in the United Kingdom, France, India, Finland, Singapore and Malaysia.
23. Given the centrality of the topic, I am particularly grateful to the English Bar for inviting me to speak at their roundtable at their Opening of Legal Year in October on the importance of the independent Bar.
24. Over the past year, we also had the opportunity to connect with many of the non-permanent judges of our Court of Final Appeal from other jurisdictions. Their contribution to the administration of justice in Hong Kong is well-recognised and we are also grateful for their support to the Hong Kong Bar.

25. The international legal community count on the Hong Kong Bar to give them a fair and unbiased view of the situation regarding the rule of law and administration of justice in Hong Kong. We will continue to discharge that role by laying out all the important facts for them from our distinct and close vantage point. In so doing, we will continue our commitment to neither sugar-coating nor sounding unduly alarmist notes over the varied and continuously evolving aspects of our system and situation.

Engagement with the Central People's Government

26. With the opening of the border, we have had one of the busiest years in our history, reconnecting with representatives from the Central People's Government, regional agencies and our counterparts in the Mainland.

27. In April, the Bar visited Beijing for the first time in 5 years. We were received warmly by representatives of the Central People's Government and the legal community in the Capital. Our interactions were most encouraging and have reaffirmed the great value in resuming and continuing with frank and good faith dialogue in this sphere. Such exchanges are not only vital to the future of the Bar but much aligned with the ethos of the Hong Kong community, and the importance we place on having wide-ranging and candid exchanges of views on important legal issues.

28. In all our meetings, our friends in Beijing were genuinely interested in the honest views of the Bar on a wide range of topics to do with the situation in Hong Kong. The conversations were frank and also forward-looking.
29. The discussion also covered the future of the independent Bar in Hong Kong. Given that there is no independent barristers' profession in Mainland China and in many other jurisdictions around the world, some of our young members were understandably concerned about the future of the Bar as we know it in Hong Kong. Yet in all my conversations with Central Government representatives in the past year, the message to us has been crystal clear, and highly encouraging: they recognise the independent Bar as an integral part of the common law tradition in Hong Kong, and that tradition should remain unchanged.

Looking ahead

30. Looking ahead, I am sure 2024 will be an equally eventful year for Hong Kong, with important national security cases being tried before our courts and with the imminent promulgation of the Article 23 legislation. Hong Kong will definitely be watched closely by the international legal community and we will have to demonstrate that we are capable of meeting these challenges.

Article 23

31. The headlines in the past couple of weeks have been partly dominated by Article 23. We have in the past acknowledged that there is a constitutional duty on the part of the HKSAR Government under Article 23 to enact domestic law, and this reality is now part of the legislative agenda for 2024 submitted by the Government.

32. Following the enactment of the National Security Law, the Article 23 legislation will no doubt trigger a fresh round of debate over the future of our city. Hong Kong has long prided itself on the high degree of freedom it has enjoyed as an international city with a distinct position and role in the wider region. Over the years, this freedom has underpinned a unique and hugely successful ecosystem for business activities, cultural exchanges and the tourism industry. Paired with a first class legal system, our freedoms have supported Hong Kong's role as an international financial centre.

33. Given the challenging geo-political currents around us, there will likely be attacks on the legislation contending that Hong Kong is no longer a free city and the rule of law is dead. Whilst some of these remarks may not be bona fide, many people do have genuine concerns.

34. To truly serve and protect Hong Kong and its people, the new legislation will have to be clear and precise. The consultation process will have to be transparent and thorough in order to refute any suggestion that our Government is not prepared to listen. The balance between safeguarding national security and protecting fundamental rights as enshrined in the Basic Law ought to be carefully calibrated.
35. I am confident that our Government will give serious consideration to the views of the Bar in the legislative process. We will do our very best in making the most out of the expertise amongst our members to convey our honest comments and professional insights.

Our 75th Anniversary

36. The Hong Kong Bar will be celebrating its 75th anniversary in 2024. Over the past 75 years, the Bar has played a vital role in the administration of justice in Hong Kong. We have had the great privilege of contributing to the wellbeing of the city and its people. We can assure the people of Hong Kong that the determination to do so will not waver.

The Judiciary

37. Turning finally to our judges. The public may not appreciate the pressure and workload faced by our judicial officers. Internally,

most of our judges have been dealing with extremely heavy workloads. Externally, there are often unfair criticisms and pressure applied against our judges from overseas. In the face of such challenges, it is most noteworthy that some of our judges have chosen to defer their retirement or stayed on as part-time deputy judges in order to support the organisation and are handling important and difficult cases.

38. In the Chief Justice's Address at the Opening of Legal Year in 2001, Chief Justice Andrew Li had this to say about the judges who were resolved to stay on to steady the ship shortly after the 1997: "Like old generals, most of them wanted to fade away to enjoy their well earned retirements and were staying on out of a sense of duty". On behalf of the Bar, we would likewise like to thank and pay tribute to you for your service and dedication.
39. Amidst the realities of our complex world and its challenging times, we in Hong Kong have a very great asset: that of hardworking and capable judicial officers who discharge their judicial functions tirelessly and with integrity.
40. Whilst there are no doubt challenges awaiting us, the sun will always shine after the storm, and new growth awaits. To weather the challenges before us, the Judiciary and the legal community will need the support of the public. I urge the public to support our judiciary. On the part of the Bar, we promise to do our very best

for Hong Kong in the coming year.

41. On behalf of the Bar, I wish you a safe and prosperous 2024 and a healthy year of the Dragon.

Victor Dawes SC
Chairman of the Hong Kong Bar
Association

22 January 2024



**SPEECH OF MR C M CHAN
PRESIDENT OF THE LAW SOCIETY OF HONG KONG
AT THE OPENING OF THE LEGAL YEAR 2024
22 JANUARY 2024**

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

1. I am very honoured to have the opportunity to speak as President of the Law Society for the third time before such an eminent audience on this important occasion of the Opening of Legal year.
2. This is the first Ceremonial Opening of Legal Year after COVID-19 restrictions were fully lifted in March 2023. On behalf of the Law Society, I am most grateful to our over 100 guests representing around 50 lawyer associations and legal organisations from around 20 jurisdictions, for gracing us with their presence, some of whom have travelled long distances to join us today.
3. Under common law principles and section 3(2) of the Legal Practitioners Ordinance (Cap 159, Laws of Hong Kong), every solicitor is an officer of the court. As such, a solicitor owes a duty to the court in the administration of justice. Having the right to practise is a privilege, which comes with the duty to serve the public ethically, diligently, and competently. Law is thus a profession, not a business and the true end for members of the profession is to use their legal knowledge and skills to serve and protect the legal rights of the public, to facilitate true access to justice and to uphold the rule of law.
4. As the professional association of over 13,200 solicitors, 1,000 trainee solicitors, 920 Hong Kong law firms, 1,400 foreign lawyers and 70 foreign law firms, the Law Society of Hong Kong is conscious of its important role in shaping the development of the legal profession and system, which forms the backbone of society.

Safeguard the rule of law

5. The rule of law is the cornerstone of Hong Kong's success as a leading financial centre. One of the most important roles of the Law Society is to safeguard the rule of law and uphold the principles on which this core value is founded.
6. In the 2023 World Justice Project Rule of Law Index, Hong Kong's overall ranking remains high. We continue to rank the sixth in East Asia and the Pacific, and the 23rd out of 142 jurisdictions covered in the Index, 3 places higher than the United States which ranks the 26th.
7. A distinguishing feature of the constitution of our Court of Final Appeal ("CFA") as the final appellate court in Hong Kong is that in addition to the Chief Justice and permanent judges, there is a panel of non-permanent judges ("NPJs") from Hong Kong and other common law jurisdictions invited as required to sit on the CFA. There is, at present, a panel of four non-permanent Hong Kong judges and 10 non-permanent judges ("NPJs") from other common law jurisdictions.
8. NPJs are all eminent judicial officers highly respected in their own jurisdictions and committed to the fair administration of justice in accordance with the law. Their acceptance of the appointment as NPJs to sit on the city's top court sends a clear message of their confidence in Hong Kong's judicial system in upholding the rule of law and judicial independence. May I quote from NPJ The Right Honourable Lord Sumption, Former Justice of the Supreme Court of the United Kingdom, who had said "The permanent judiciary of Hong Kong is completely committed to judicial independence and the rule of law."
9. Further, another NPJ Lord Neuberger of Abbotsbury GBS, Former President of the Supreme Court of the United Kingdom, had said: "At the moment I detect no undermining of judicial independence [in Hong Kong]. If I felt that the independence of the judiciary in Hong Kong was being undermined then I would either have to speak out or I would have to resign as a judge.". Both Lord Neuberger and Lord Sumption are still serving as NPJs. I need say no more.
10. During the past year, foreign attempts have been made, one after another, to exert pressure by threat of imposing sanctions against Hong Kong judges, prosecutors or government officials due to the type of cases that were assigned to them to

handle or due to the statutory role that they had to perform. These actions were clear interference with judicial, prosecutorial and governance integrity that went against every core value embraced in the rule of law.

11. Our judges deal with all cases (including cases relating to national security) brought before them strictly in accordance with the law. They exercise their judicial power independently, and abide by the Judicial Oath and firmly discharge their duty in the administration of justice without fear from intimidation or favour, self-interest or deceit.
12. These politically driven attempts, if undefended, will blur the facts and the legal principles and confuse the general public.

Judicial and prosecutorial independence

13. In Hong Kong, judicial and prosecutorial independence is constitutionally entrenched in The Basic Law of the Hong Kong Special Administrative Region (“Basic Law”).
14. The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“NSL”) was enacted in accordance with the Constitution of the People’s Republic of China and the Basic Law. Government officials having a role under the NSL are fulfilling their statutory duties pursuant to the provisions in the law.
15. Further, the NSL expressly provides that in safeguarding national security, Hong Kong shall respect and protect, in accordance with the law, human rights which the Hong Kong residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, including freedoms of speech, press, publication, association, assembly, procession and demonstration.
16. While enjoying the protection of the law which gives us the comfort of security of person, property and an orderly society, we must not forget that the system only works if everyone also subscribes to the underlying spirit of the law and remains bound by it. Article 42 of the Basic Law provides that Hong Kong residents and

other persons in Hong Kong shall have the obligation to abide by the laws in force in Hong Kong.

Equality before the law

17. Another core principle embodied in the rule of law is equality before the law, which is expressly provided for in Article 25 of the Basic Law. Selective permission to break the law by some people because of, for example, their political stance, is an affront to equality before the law.
18. No one can be above the law. Anyone breaking the law must be brought to justice through our independent legal and judicial systems and face the legal consequences for the breach in accordance with the law.
19. Apart from issuing public statements, the Law Society also initiates exchanges to clarify, on the basis of facts and the law, any misunderstanding and misperception about the situation in Hong Kong.
20. In the past 12 months, I have visited many countries trying to clarify certain misunderstanding and misconception about the situation in Hong Kong. For example, in a duty visit to the United States as President of the Law Society last August, I had the valuable opportunity to meet with representatives of the American Bar Association and other US state bar associations as well as representatives of the U.S. State Department responsible for Hong Kong and Macau affairs and the National Committee on US-China Relations.
21. It is hoped that through such open dialogue, the Law Society could offer our overseas friends new perspectives about the actual situation in Hong Kong, in addition to what they hear from western media, to help them arrive at a more objective, fair and balanced view about the city.

Promote connectivity with new frontiers

22. The Belt and Road Initiative opens up new frontiers for Hong Kong legal professionals to extend their reach to business partners beyond the more conventional ones in North America, United Kingdom and Australia. The release of the huge potential of the new markets is very timely when the rising geopolitical tension takes its toll on the global economy.

23. The Law Society has been actively exploring opportunities for our members in new markets like Central Asia and the Middle East. For example, in March 2023, the Law Society sent a delegation to Dubai and promoted the Hong Kong legal capability and business environment to businessmen, government officials and legal professionals there.
24. As of the end of December 2023, the Law Society has entered into MOU with 19 legal organisations in 17 jurisdictions which have signed Belt and Road cooperation with China. Further, out of 1,476 foreign lawyers registered with the Law Society, 401 have their home jurisdictions situated along the Belt and Road.

Create synergy

25. “One Country, Two Systems” is a unique concept that allows two different legal systems to co-exist within one country. Owing to increasing interaction between Hong Kong and the Mainland, the two legal systems frequently cross paths. In this regard, the Law Society has been playing an active role in facilitating a mutual understanding of each other’s distinctive systems among practitioners in both jurisdictions.
26. For example, the Law Society has co-launched initiatives with Mainland institutions (including Peking University Law School, Shenzhen University Law School, Guangdong Lawyers Association, Macau Lawyers Association and others) and maintained dialogue with Mainland officials (through our regular Beijing visit and meetings with Mainland authorities). These valuable opportunities enabled the Law Society to reflect views of our members and issues about the legal industry in Hong Kong directly to the authorities.
27. The Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”) Legal Professional Examination organised by the Ministry of Justice launched in 2020 was a very welcomed breakthrough. It offers an avenue to those eligible Hong Kong and Macao legal practitioners to qualify as GBA lawyers to practise in the nine Mainland cities in the GBA. Three examinations have been held since its launch and nearly 400 Hong Kong and Macao lawyers have been granted a licence to practise as GBA lawyers.

28. As a result of the Law Society's active lobbying for the continuation and enhancement of the GBA Legal Professional Examination, we were pleased that it has been extended for three more years to October 2026. The scope of legal service collaboration between Hong Kong and other GBA cities is expected to further widen with the lowering of the post qualification experience threshold from 5 years to 3 years. The double qualifications not only facilitate true integration into the GBA legal service industry, but also strengthen the competitiveness of Hong Kong practitioners in tapping into the huge potential of the GBA market.

Technology

29. The rapid technological advancements that are taking place are dictating the pace of change in every aspect of our lives. While technology offers many advantages, it also raises many unanswered questions, particularly with respect to the impact of the rapid development of artificial intelligence ("AI") on the legal sector.
30. As an industry leader, the Law Society has issued a position paper providing a holistic overview of the opportunities and challenges associated with AI implementation in legal practice. The Law Society will work on the recommendations and coordinate discussions with different stakeholders to ensure that AI is applied ethically for the benefit of the profession.
31. Established in 1907, the Law Society will be celebrating its 117th anniversary in April this year. We will proudly continue our century-old mission to be a staunch defender of the rule of law and a rigorous gatekeeper of the highest professional standards. In the current challenging geopolitical environment, disputes should be resolved in a peaceful manner and as lawyers, we play an important role in facilitating dispute resolution in a calm and rational manner through non-litigious avenues like mediation.
32. May I conclude by wishing you all a fulfilling, prosperous and peaceful 2024. Thank you.