

CJ's speech at Ceremonial Opening of Legal Year 2024 (with photos)

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.

