

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

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.