

SPEECH OF THOMAS S. T. SO
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AT THE OPENING OF THE LEGAL YEAR 2017
9TH JANUARY 2017

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

Introduction

It gives me great privilege to welcome you all to this year's Ceremonial Opening of the Legal Year. This year is particularly momentous and memorable, because this year marks the 110th Anniversary of the establishment of the Law Society of Hong Kong.

It would seem most timely, therefore, for us to reflect on this occasion – how we have done over the years as a profession.

'Professionalism' Evolved

I asked a few trainees a few months ago on how they understood 'professionalism' to mean. I did not specify under what contexts, and their replies were on the lines of : 'putting your client first', 'making sure standard of services are met', 'client is happy', and last but not least, 'getting paid for what we deserve' by the more money-minded.

These responses not only confirm the impact market domination have had on the profession over the years, they also serve to reflect that for many, the dominant position is now held by the client. Having said this, I dare not say any of the trainees answered incorrectly, as client-interests are of course very important. Yet the type of 'professionalism' I seek to address today transcends these client-bound parameters, and is one that has perhaps been brushed aside over the years.

Rethinking 'Professionalism' as Embodiment

The kind of 'professionalism' I refer to, is something more than the client-bound 'routine' some of us might inadvertently *perform* when in practice. I offer that, and allow me to use this term - 'true' professionalism should not be 'performed'; it should not be temporal, nor should it be client/target-specific. It certainly should not be something one puts on only when they are at the office or takes off with their suits and their gowns at the end of the day.

Dislodging 'professionalism' from its more materialistic associations, I offer for 'professionalism' to be something *in addition* to the level of services we provide.

First: Professionalism should be something that is embodied.

I remember receiving a delegation of lawyers and law students from a nearby jurisdiction some time ago, and when I explained to them the professional duties expected of a lawyer in Hong Kong, they were surprised to know that apart from the duty to act in favour of the client's interests, we actually also owe so many different duties to many other non-client parties, even to the opponent.

Much to their disbelief, legal professionals in Hong Kong did not solely owe their duty to the client alone. There are many more layers of expectations placed on lawyers *beyond* the level of services they provide.

When a lawyer gets admitted to the profession, he or she gets admitted to a special society of people, who have sworn to uphold standards well beyond the general community of economic producers. This is to say they have pledged duty not just only to the client and the Court, but also to the public, and to their own system of professionals. By virtue of our membership within the profession therefore, we have the obligation to maintain the profession's good repute so as to ensure its continual command of trust and respect from society.

This is substantiated by the words of our Chief Justice, who opined in a judgment some time ago:

‘Inappropriate conduct is conduct that is unbecoming to an honourable profession, a profession in which trust is reposed by the public and in which dignity is to be maintained.’¹

I now want to move to another point: **Professionalism should be embodied not only in legal practice, but also in other activities.**

This is by no means a new concept, as it echoes what is already prescribed under our Professional Guide.² It is one I gather to have been cast aside over time, but it must be noted that any legal professional, whether practising or not, is at all times an officer of the Court and member of the profession. It follows therefore, that the certain standards of behavior required of a legal professional, even in activities outside legal practice, must still be upheld.

Thus, there is no ‘on-duty’ or ‘off-duty’ in the embodiment of true professionalism. It should also be noted that true professionalism, when embodied, includes shouldering the extra burden to behave more cautiously than a man in the street and to heed restrictions; insofar that the collective reputation of the profession is maintained, and its trust and respect from society is preserved. In layman's terms, it's akin to making sure no one in the profession ‘loses face’ as a consequence of your actions, and making sure the public will continue to choose to come to you for advice and listen to you.

Permeating Social Spaces

Bringing these conversations into a macroscopic level, we are faced with the question: how can lawyers ‘embody professionalism’ in their individual capacities, whilst at the same time strive to command trust and respect from the society for the profession?

Lord Thomas Bingham once famously opined:

‘...the essential issue... is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable *integrity, probity and trustworthiness.*’³

¹ The Law Society of Hong Kong v. A Solicitor [2003] CACV 280/2003. See also Myers v Elman [1940] AC 282, at 288-9 per Viscount Maugham (cp. here section 2(2) of the LPO).

² Principle 1.03 reads: A solicitor is an Officer of the Court (see section 3(2) of the Legal Practitioners Ordinance (Cap. 159), and should conduct himself appropriately. Its commentary stipulates that, as an Officer of the Court, proper standards of behavior whether in his practice or in his independent business activities are required of a solicitor as a member of an honourable profession.

³ Bolton v. The Law Society [1993] EWCA Civ 32

I must emphasize, that the qualities which are embodied in pursuit of professionalism are of course not limited to the three named by Lord Bingham, as they obviously entail a lot more good qualities that a professional should possess and is expected of by the society. But for today, I would just like to focus on the qualities of ‘open-mindedness’ and ‘generosity.’

Open-Mindedness: Drive to Learn

On ‘open-mindedness’, I must express ‘the professionals’ in general are a noticeably ‘*change-averse*’ group – in that many of us are probably not the most open-minded bunch, by nature of the work we do, and many of us are disinclined and reluctant to change.

However, there is no place, nor time for complacency in this constantly-evolving market space. In the same way that laws are updated regularly to keep up with the changing society, true professionals are required to change with the changing market, in order to effectively respond to the changing needs of the client.

This is why true professionals must adopt an ‘open-mind’ and seek to pursue new skills and new abilities to stay ‘up to speed’ with society and other new developments. It may be that these skills are outside the scope of legal expertise, but one is encouraged to, in these cases, embrace them with an open-mind. The pervasiveness of information technology, for instance, is a good example. In the increasingly tech-dependent economy we live in, there is a need for professionals to familiarise themselves with evolving technology and the impacts it may bring to the industry. In so doing, professionals are likely to be able to offer the most relevant and updated advice when solving problems of the future. We are expected to solve problems of the future, and the strategic acquiring of these skills is a means of preparing for what the future demands. More of us are thus encouraged to keep updating and refining our skills, so as to fulfil our duty to the public through embodying the virtues of open-mindedness and a passion for learning.

Open-Mindedness: The Way You Handle a Case

I now offer another angle of looking at how open-mindedness may be embodied.

The first and foremost function of legal professionals in our society is to help clients *solve their problems*. The standard protocol usually involves advising clients of their legal rights, fighting and defending for them, and in most times pushing their case to the court for a decision. Many believe this is the only way. But I venture to suggest that pushing your client’s case to the Court for a decision may not always solve their problem.

As we have seen cases where intricate family feuds and other emotional entanglements are involved, it is all too common that the root of the problem remains unresolved even after the Court has given judgment. Problems such as these cannot always be solved by a judgment or a decision on who is right or who is wrong in law.

In recognition of this, a true professional might, in these scenarios, seek to find a level playing field, a common ground with common interests, upon which the relevant parties may enter into mediation. It must be emphasised that choosing **NOT** to submit to court proceedings is in itself also an art to be mastered within legal expertise. True professionals should seek to assume a backseat view when deliberating these matters; they should prudently assess whether entering into court proceedings is the only and best way of helping their client solve their problem.

This phenomenon is seen to be positively received since its promulgation, as the increase of dispute resolution lawyers over the last decade evidences this. Embodying professionalism involves

realising that sometimes law alone, and talks on law, cannot always be used to solve human-to-human relational problems.

Similarly, professionals can facilitate the society to resolve different types of difficult disputes - be it social or political with an open-minded attitude, instead of pushing forward uncompromising manoeuvres 'in the name of the law' when it is clear that doing so will get you nowhere. Rather, they should welcome other alternatives and strive to solve whatever problem for the betterment of the general good of all stakeholders involved. If more of us were able to fully appreciate and understand the importance of this, more of us will have properly embodied professionalism.

Generosity: Pro-Bono & Community Services

The final point I'd like to draw on before I close is the virtue of generosity. I am grateful to have made acquaintances with many generous colleagues from within the profession, yet a real shame it is that the value of generosity is seldom associated with our profession.

Over the past few months, I had been receiving several queries and phone calls from concerned parties – who, after watching episodes from a popular local television legal drama, called to ask if it was true that lawyers only offered services to clients who have money. It got to a point where even close relatives, including my in-laws, rang to ask: 'is it true lawyers offer better services to richer clients who pay more?'

The public perception of lawyers as nothing more than money-minded businessmen stems from these false depictions and this can be dangerous for the profession, as it directly affects the trust and respect it commands from society.

The truth is, there are in actual fact many lawyers in Hong Kong who have generously taken time to participate in public service and pro bono work – just not many people know about them. This is why our profession must put in double the effort to ensure the public are aware that the quality of 'generosity' pervades the profession. Hence, even more lawyers should actively seek to volunteer in pro bono work as a means of assuring to the public that *these* are also some of other additional duties lawyers take on for the good of the society. There is no better way to rectify the money-minded impression, than consistently providing legal advice and legal help to the under-privileged in the community.

Law Society Efforts

Over the past 110 years, the Law Society have equally been **110%** behind the efforts of making these qualities that describe 'true professionalism' properly realized.

In the education aspect, under the aims of promoting the qualities of open-mindedness, we have put much emphasis on CPD (Continual Professional Development) and will continue to do so. We have long been encouraging members to engage in these programmes to further their skills. It is reassuring to note that in 2016 alone, the Law Society has organized a total of 390 training courses totaling more than 17,000 attendances, which goes to show that many of our members recognize the importance of keeping abreast of the latest legal developments.

Non-legal courses, on the other hand, are not as prevalent. And this is an area in which the Law Society seeks to shift its focus in the coming years. In some of the more mature jurisdictions, such as Australia, Canada and the US for instance, their CPD equivalent schemes require for the practitioner to complete a certain minimum number of hours on non-legal courses. While it is encouraging to see the growing prominence of RME and other non-legal courses in Hong Kong, we must endeavor to make bigger strides on this front, so that lawyers not only receive upgrades and

training in substantive black letter law, but also lateral, all-round training (on the soft skills and ethics) too. In view of this, the Law Society has plans in the coming year, to introduce a few more non-legal courses which include a new practice management course that aims to raise our members' abilities to manage their practices more efficiently. We hope for our members to be open-minded about these courses, so this quality may be embodied and applied in the handling of their professional work too.

The Law Society has always played an active role in providing and organizing pro bono initiatives and community projects. In 2016, we have coordinated 74 community projects including most prominently Law Week, Teen Talk, Community Talks and School Talks, as well as the Legal Pioneer Mentorship Programme amongst others. There are currently 130 members serving for the 'Free Legal Helpline' which has handled over 5,000 requests for legal assistance covering many major sectors of law. And around 100 law firms have joined the Free Legal Advice Consultation Service. Last year, a record-breaking number of 117 lawyers and 26 law firms were awarded for their pro bono services through the Law Society's Pro Bono and Community Work Recognition Programme. Our statistics suggest there is a growing number of solicitors willing to sacrifice their time to make meaningful contributions to community, as well as an increasing number of law firms which have taken steps to promote pro bono culture. But I think there is room for improvement.

According to our statistics for last year, only around 10% of our members engaged in the pro bono and community work organized by the Law Society – which is a low figure compared to other major jurisdictions of similar economical status as Hong Kong. I believe we can- and we should- do better than this.

This goal, however, **cannot** be a single effort put in by the Law Society alone. First, we need support from the law firms, more of which we hope can develop a corporate culture that better accommodates and encourages their lawyers to do pro bono work. Second, we need support from the Government, the NGOs, the charitable organizations and also the Judiciary, all of whom we rely on to collaborate with, in pro bono and community projects. Last but definitely not least, we need support from our members who will be the ones putting in the time and effort to do all this. We need their open-mindedness to understand the importance of these initiatives and their generosity to volunteer.

It may be, that law in itself, is already a busy practice. And it may be, that the time spent with your family had already long been sacrificed. To embrace the above initiatives on top of all this will no doubt create additional pressure for you. You will be tired. And you will be frustrated. Yet many of you have persevered because of a 'right' kind of feeling that gets you up every morning to do so. And what is this kind of feeling? Maybe it's the kind of feeling that you're doing what the true professionals do.

On this note, I'd like to wish you all a very fruitful new year ahead. Thank you very much.