

Competing in the Knowledge Economy: The Role of Lawyers in the 21st Century:

The challenge to Hong Kong lawyers in the next decade

Keynote speech by Anthony Neoh, SC to

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Mr. Chairman, colleagues, ladies and gentlemen,

I am very honoured to have been given this opportunity to address my colleagues in the legal profession. After three years' absence from Hong Kong, I must admit to losing touch somewhat with local developments, though I have tried hard to follow the news from a distance, through principally the internet. Hong Kong newspapers are still difficult to get in Beijing, so the "net" has been my main source of news. I cannot therefore claim to speak with the authority of something close to the conditions under you have all been working in the past few years. But perhaps, it may be of some use to you, if I could be allowed to speak with the sense of detachment of someone who is out of the mainstream. As you know, I have been an academic and an adviser to the central government. I have been living in Beijing and have only made fleeting visits back to Hong Kong, to see my wife and do the very occasional case in court. So, for the purpose of this speech, please consider me a "mainlander" whose roots are in Hong Kong.

I would like to address you on three points:

- First, the challenges I believe you will face in the next decade.

- Second, the things you might consider doing in responding to those challenges.
- Third, the public policies Hong Kong might consider adopting to assist the legal profession to respond to these challenges.

The challenges of the next decade

The challenges of the next decade will come from the adjustments Hong Kong must make in order to deal with its changing economic and social structure.

The three distinctive features of Hong Kong's success in the past have been:

- One, its symbiotic relationship with the mainland.
- Two, immigration from the mainland and a substantial international community.
- Three, its ability to continually move up the economic value chain.

Supporting these three distinctive elements of success is the fact that Hong Kong has been a free economy, in the sense that capital and goods have been allowed to freely flow in and out of its borders. The fact that Hong Kong has generally fair and open public administration and a legal system familiar to the English speaking world and a judiciary which is recognised to be professional and independent, provides high confidence to participants in the economy.

But all of this would have been of little real avail to Hong Kong if there were no hinterland. Hong Kong is too small a place and it is a place too devoid of natural resources to survive on its own. So it is no historical accident that since its founding up to the present day, Hong Kong as a community exists because there is business to be done in the hinterland. Successive generations of traders have traded with the mainland using Hong Kong as a base or a transit point. In the past twenty years, Hong Kong has successfully transferred its industrial

base to the Pearl River Delta area in the mainland leveraging on the lower cost base of the area. Hong Kong has become an important funding centre for the mainland by way of credit or equity investment. Hong Kong has also become a centre for the reception of capital from the mainland. Since the early 1980's, Hong Kong has become the recipient of funds from countless sources in the mainland, both public and private. These transfers have been both lawful and unlawful by the laws of the mainland. But one way or another, Hong Kong has benefited, as the capital have in substantial part been invested in Hong Kong assets and the transaction taxes have all been paid into the public purse. That Hong Kong has been able to exploit the business opportunities of the past so effectively is due to the fact that Hong Kong not only has its own talent pool to call upon but also the talent pool of the world. Hong Kong has developed a business culture that is multiculturally compatible. Looking around the region, only Singapore has this important ability for businesses and organisations to work effectively in a cross cultural environment.

But it must now be crystal clear to us that things cannot in future be as rosy as they used to be. In the past three years, we have seen the worst economic downturn in recent memory, made all the more painful by a quick and precipitous drop from the strong performance of the economy right up to the end of 1997. China is acceding to the World Trade Organisation. From next year onwards, China's entry will start a process of change in the structure of the domestic Chinese economy which will potentially erode the role of Hong Kong thus far. The market access and tariff reductions provisions arising from the accession will mean that international businesses will find it possible to set up joint ventures or wholly owned businesses in finance, in telecommunications, in railways, in port facilities, and in many other fields hitherto highly restricted to foreign investors. Lower tariffs will mean an increase of imports. In the last twenty years consumption and capital investment in the Chinese economy has increased exponentially, with the result that much of the production capacity inside the mainland economy is destined

for the domestic markets. As a result of these developments, Hong Kong's traditional role as an trade entrepot has already suffered and this will role will continue to erode as the products of the factories in the Pearl River Delta go north and west, rather than south towards the port of Hong Kong. There is possibility that the increase in imports will compensate in part for this but Hong Kong will have to compete with the ports in the Pearl River Delta and those in Xiamen and Shantou.

In the area where Hong Kong has excelled, that is the financial businesses, Hong Kong's traditional position continues to be eroded as the domestic financial businesses of China become bigger and the markets become better able to serve the economy. Already monies raised through initial public offerings of the shares for a single company can now reach 10 billion Yuan RMB (slightly over US \$ 1 billion). This means that the bulk of Chinese companies can raise money in the domestic stock market and do so at better price earning ratios than the Hong Kong stock market. The banks in the domestic economy are getting better capitalised and are ready and willing to lend to domestic businesses as well as joint ventures. The legal system, although far from perfect, is already becoming stable enough to sustain long term business relationships. Most important of all, private business has now been given the equal protection of the laws and therefore its own space to develop as an integral part of the national economy. Private entrepreneurs can now join the ruling political party, namely, the Chinese Communist Party.

Every large city in the mainland is gearing up to reap what they hope will be the benefits of the WTO. While municipal leaders are aware that many domestic businesses will not in the end be able to compete with worldclass businesses, they are aware that international businesses will first need to get to know the business environment. In so doing, they will set up offices and employ local staff before making major investments. The influx of Hong Kong and Taiwanese investments in the mainland has brought not only employment

but also new concepts in management. A new generation of skilled Chinese managers have grown out of this influx of investment. All municipal leaders are aware of this and so, without exception, they are offering incentives to international businesses to set up in their cities. At the same time, they have been cleaning up their environments and re-planning their cities. Shanghai at the moment leads the pack. Soon there will be others coming closer and closer to the conditions which now international businesses find most congenial in Shanghai.

Now what does this leave for Hong Kong. I think there is a great deal, particularly, for the legal profession. Over the last one and hundred and fifty years, Hong Kong has re-invented itself many times. Each time, Hong Kong has had to move up the economic value chain. In the area of textiles, we had had to move from cheap clothing to high fashion. In the area of manufacturing, we had to move our factories across the border and graduate to design and marketing, and in some notable cases, to high end research and development. In our international and cross border transport facilities, we must graduate to integrated logistical solutions in order to compete effectively. As China adjusts to the demands of the WTO and as its economy further develops, there will be an increasing need for professional and management talent. Hong Kong stands to benefit from these needs.

But in moving up the value chain, we make yet more demands on our human resource pool. So we should ask ourselves how we can leverage all the advantages of this pool of human resources. Looked at in the round, the essential advantages of our human resources pool are:

- One, we have people who are able to function effectively using the international language, which is English. At the same time, there is an ability to also function effectively in Chinese, and now increasingly in Putonghua.

- Two, we have people who are able to cross cultural divides. Business and professional organisations can operate with a multinational staff in a multicultural environment.
- Three, we have people who can be called upon to come from an overseas base at short notice.
- Four, we have people who are good at getting access to information with ease through the internet or otherwise, on any subject.
- Five, we have people who have the ability to take a global view.
- Six, we have people who are used to working in a culture of law and a culture of sound management.

These are all advantages which are needed to build the next generation of professionals and managers of China.

We used to have a seventh advantage when we had a relatively young population, replenished from time to time by immigration from the mainland. As with all urban populations going up the income scale, Hong Kong's birth rate has declined and its population has been aging, and in the next twenty years, our dependency ratios will drastically increase. This problem has in fact become acute with societies such as Japan which has discouraged immigration but in societies, such as the United States, the problem is mitigated by the liberal immigration policies they pursue. Within the next twenty years, the realities of demographics will bite us strongly. Hong Kong will have more and more retirees, making more and more demands on our medical and social welfare systems. Therefore, if we are to position ourselves to be competitive in the future, we shall have to consider more liberal immigration policies so that our population make-up does not age that quickly. Measures we need to take might include allowing a faster pace for those entitled under the Basic Law to reside in Hong Kong to actually come to Hong Kong, for they represent an infusion of younger people who hopefully will regard Hong Kong as their

home and work for the general welfare of the community. In fact, time is against us, and we must move quickly.

The strategies the legal profession might consider

Thus far, I have gone only into the background under which Hong Kong lawyers must work in the next decade. From this background, I hope it will be reasonably clear that Hong Kong lawyers must take a multi-dimensional perspective. First and foremost, we must regard ourselves as part of a great nation. It is a nation which will emerge from the shadows of the twentieth century into the light of the 21st. The giant is awakening. With our accumulated skills and the skills we are capable of accumulating in the future, we have much to contribute. And, we are only invited to the table but we are in fact part of it. Unfamiliar as this may sound to you, we are Chinese lawyers. The law of the HKSAR is Chinese Law, albeit, Chinese Law of a special kind, established under Article 31 of our National Constitution and then, the Basic Law. Let us then, work out our strategies for the next decade. These strategies might, I think, include the following:

- Engagement of our colleagues in the mainland with a view to crafting not only professional relationships but also mutual improvement of professional standards.
- Positioning our practices to take on a global, local, and national perspective.
- Become exemplars of the vocational role of lawyers.

Engaging our colleagues in the mainland

I have never regretted the many months of efforts I made to popularise Hong Kong law to our mainland colleagues and then, help in the publication of the first book on Hong Kong Law in Chinese in 1986. This book was edited by Margaret Ng, our representative in the Legislative Assembly, then starting her

career at the Bar. Margaret spent a great deal of time in editing that book, which has since sold many copies, and although it is now somewhat dated, the book is still on the shelves of quite a few bookstores. It is still a useful first stop for one who wishes to get a quick glimpse at the general principles of Hong Kong law, or the common law which underpins it. The many colleagues who participated in that effort, which included Margaret Ng, Audrey Eu, another member of the Legislative Assembly, Elsie Leung, our incumbent Secretary for Justice, and Raymond Tang, the present Commissioner for Privacy, all gave of their time generously and as far as I know, had found the experience personally rewarding. Since then, there have been countless occasions of professional contact between Hong Kong lawyers and mainland lawyers.

As we are all Chinese lawyers, there must be tremendous scope for the two professional associations to form working groups on a whole range of subjects which straddle the two jurisdictions. Examples which come to mind are: corporate finance and securities, banking, joint ventures, project finance, arbitration, inter-jurisdictional litigation and judicial assistance. These joint working groups can draw on international experience, develop seminars, exchange standard documentation, and engage in dialogue with governmental and regulatory bodies to advance public policy and regulatory standards.

Positioning our practices

All professional practices in Hong Kong must take a global, local and national perspective in the light of the coming challenges. Hong Kong will in future have to compete with the best in the world. Hong Kong lawyers will not be exempt from these realities. What does that mean for lawyers. All lawyers must equip themselves with the latest trends in legal development in all three areas and develop the means to get help in all three areas. That also means that law firms must begin to focus on what they would want to do, it will be

difficult to become general emporiums, many of us will have to be boutiques. As boutiques we shall need to develop our own niches, using all the latest technology available today, including the internet. If any of these usages should hit traditional professional etiquette constraints, we should be ready to change the form of the rules without compromising the basic tenets of professional conduct. Management tools for the management of businesses, including market development principles will have to be used. Many law firms actually employ professional managers to manage their businesses and use the latest measures for business success, which includes customer satisfaction and retention as well as systems of quality control. Some law firms have actually obtained ISO certification for their quality assurance systems.

The vocational role of lawyers

Although I am an advocate of using the latest management tools in managing law practices, I am mindful of the fact that the practice of law is far, far more than the running of a business. All businesses must be run according to the ethical expectations of the communities from which they draw sustenance. Law practices only start from this point. Beyond this, there are many more layers of expectations placed on lawyers. A lawyer does not merely have a job, a lawyer has a vocation. I do not wish to make this too dramatic, but 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. A lawyer has a duty not only to the client but also to the system. In the common law system, institutionalised for the HKSAR by the laws of our country, rules have developed over the centuries to ensure that lawyers know how to act. In criminal cases, lawyers can still defend their clients even though they knew that their clients were guilty as the legal system places the onus of proof on the prosecution. But lawyers can never mislead the court or allow their client to mislead the court, so there are rules which circumscribe the questions which may be asked of witnesses and

defence lawyers must seek release by the court if such a client insists on giving evidence denying what they had done. Lawyers must ensure that their clients provide all relevant documents to the court in civil cases, even if the documents help the opposite side. Lawyers can never allow their personal interest or the interest of one party who they represent to affect the advice they give to another client. Lawyers are expected to try their best ensure that their clients abide by all regulatory rules in instances where applications for any kind of regulatory approval are sought. But there is one less formalised expectation, not set out in rules of conduct. Lawyers are expected to advance the administration of justice and the Rule of Law, even though it might mean that they are taking an unpopular stand. Justice is too important a foundation of civilised society to be submerged in short term considerations of popularity or business gain. That is the challenge which constantly attends those who have dared take on the vocational mantle of a lawyer.

Public policies we might pursue

Then finally, let me address the public policies which might be adopted to assist the legal profession to meet the many challenges of the next decade. First, I applaud the efforts of the Secretary of Justice in seeking better understanding of the legal profession of the SAR and her efforts in obtaining practice opportunities for our legal profession in the wake of China's entry into the WTO. I also applaud her efforts to develop mutual judicial assistance agreements in civil litigation and arbitration. So far, we have had success in mutual recognition of arbitral awards. We await further developments on mutual judicial assistance in civil litigation in the courts, including taking of evidence and mutual recognition of judgments.

But I believe that the most important impact which any future public policy in the legal arena will make is in the area of reform of legal education. The many challenges which will be placed on lawyers in the future and the need for

lawyers to take a global, local and national perspective, must mean that we will need a rounded and mature entrant to the legal profession. The present system of an undergraduate law course plus a year of professional studies will be grossly inadequate to produce an entrant able to work effectively in the testing environment of the future. The Consultants' Report on Legal Education Reform recognise these challenges and propose a number of solutions. Whichever solution is adopted in the future, I hope we will not opt for half measures for financial reasons alone. Investment in education is investment in the future. All good investment decisions in history have not come from half measures. All bad ones have. My own preference will be the development of a postgraduate law course of two years plus a year of professional qualification. All entrants to the law course must pass a language and aptitude test, like the LSAT test in the United States.

Conclusion

In conclusion, let me state that I cannot possibly lay out for you all the challenges of the next decade. But I hope I have today given you sufficient food for thought, at least to start with. I have no doubt that the profession and its leaders will rise to the difficult challenges of the future. I for myself, am optimistic. I was born and raised in Hong Kong. I have seen Hong Kong rise and fall through many economic cycles. Each time, the people of Hong Kong have re-invented themselves. I am optimistic that I will not be disappointed this time.

Thank you for your attention and patience.

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