

**SPEECH GIVEN BY THE PRESIDENT OF THE
LAW SOCIETY OF HONG KONG
ON THE OCCASION OF THE OPENING OF THE
LEGAL YEAR ON 14 JANUARY 2002**

Honourable Chief Justice, Secretary for Justice, Chairman of the Hong Kong Bar Association, Honourable Judges, Distinguished Guests, fellow members of the legal profession, ladies & gentlemen.

Year 2001 is a year to be remembered by lawyers in Hong Kong. China's accession into the WTO will bring new challenges and opportunities to the local profession. The Review on Legal Education and the Report of Civil Justice Reform have laid the foundation stones for future changes which will affect both the study and the practice of law. Lawyers of our generation will never forget our New York colleagues who lost their lives in the World Trade Centre on the 11th of September 2001.

Last year I opened my remarks by saying that there were then encouraging signs that we were beginning to pull out of the deep depression into which the profession had sunk during the preceding year. Sadly that optimism was unfounded at least for a number of firms who have continued to find the "going" very difficult in a world that has changed dramatically from one in which conveyancing and property related matters played a major role. Nevertheless a very significant number of firms have turned their attentions to other areas of practice and with notable success.

The process of transition, which is taking place, may well prove to be a benefit to the profession which has moved into other areas of lucrative work far removed from the more traditional practices. Through seminars and the establishment of links with lawyers in the Mainland the Law Society is taking active steps to assist its members in “re-tooling” their practices and enabling them to face the challenges which China’s recent accession to the WTO will undoubtedly bring.

Businessmen and professionals in Hong Kong have been responding positively to the Central Government’s announcement of substantial development in the Western Region of the Country. The Law Society has taken a decisive step to forge our links with our mainland counterparts especially in the Western Region. In 2001, we have paid visits to the provinces of Sichuan, Shaanxi, Shanxi, Hubei, Anhui, Hunan & Hainan and the cities of Beijing, Chongqing, Chengdu, Dalian, Wuhan, Hefei & Nanjiang, just to name a few. We have built up many valuable contacts and have had a lot of interest shown by both local lawyers and organisations at what Hong Kong solicitors can offer to them. We shall continue to build on these relationships and seize every opportunity that comes out of these visits.

There is an enormous amount of interest from Mainland lawyers in establishing some form of association with Hong Kong law firms. Discussions are going on, with the assistance of our Department of Justice, between the Law Society and the Ministry of Justice and All China Lawyers Association as to how this might be best achieved within the framework of existing legislation. Should it be necessary to do so, we shall seek amendment of our legislation to achieve this. However, the likelihood will be that this will not prove necessary and the main changes would need to be effected in the Mainland rules.

The success of our efforts to step up our links with our mainland counterpart can also be demonstrated by our programme of exchange with Chinese lawyers who spend a month in the offices of Hong Kong law firms. There is increasing pressure on us to extend the programme so as to satisfy the overwhelming demand for places on it from Mainland lawyers. We are seeking the opinion of our members' firms to see whether we can accommodate even a larger number without causing an unacceptable burden on our own members who provide familiarisation and assistance to the visiting lawyers.

In December the first group of Hong Kong solicitors went to Chongqing as the out-bound leg of the exchange process. They spent time working in the offices of their counterparts in that city and by all accounts, benefited greatly from the experience notwithstanding the cold weather and the hot and spicy local cuisine!

This time last year we were awaiting the report by the two consultants commissioned to review legal education in Hong Kong. Their report was published in August and has been met with predictable criticism in some quarters. It has certainly proved to be an emotive issue but that was to be expected of a document which recommended radical changes to the way in which lawyers are trained. The Law Society has accepted the majority of the proposals in the report. We consider that they make sense. The consultants with their vast and specialised experience in the fields of legal education confirm what a large number of solicitors have been saying for some time about the standards for entry into our profession and the need for change.

However we accept that radical change such as abolition of the Post Graduate Certificate in Laws and its replacement by a Legal Practice course cannot take place overnight and requires further consideration by the government particularly as regards funding. Thus there is a need for immediate reform of the PCLL as an interim measure until such time as the consultants recommendations can be put into effect. It is in the interests of the profession and the public that those reforms are undertaken in a thorough and proper manner and with substantial participation being exercised by the profession.

Since the PCLL is the gateway to the profession, the Law Society considers that in carrying out the interim reforms the two universities must be accountable to the profession. It does not, however, consider that as a regulator of the profession its proper role in the reform of the PCLL should be to participate in the running of the PCLL from within the universities but rather to provide the universities with standards, benchmarks and specifications that it considers appropriate to all aspects of the reformed PCLL. The Law Society will only approve the PCLL without further courses or examination by graduates of the PCLL seeking to enter into trainee solicitor contracts if the reformed PCLL meets these standards, benchmarks and specifications which we shall discuss with the universities either directly or through the Academic Boards to be set up for the purpose. The Law Society believes that it owes a duty to the profession and, more importantly, to the public to ensure that standards of entry to the profession are set at a level which will enable Hong Kong to maintain its position as a provider of first class legal services in Asia.

On the subject of training the Law Society is committed to the concept of life long learning and for that reason has put in place its mandatory Continuing Professional Development programme which with effect from 1 January

2003, will include all practitioners who hold practising certificates. With the increasing number of senior members of the profession coming within the mandatory scheme it has been essential to review the way in which the Law Society acts as a course provider particularly since there are now more of them in the market.

The Law Society has taken the opportunity to introduce a more structured programme of skills based workshops and lecture based courses in the 11 key areas of practice including Civil & Criminal litigation, Commercial Law Practice and Family Law Practice. The workshops will be offered at different levels from introductory to more advanced levels and will be designed in such a way that practitioners will be able to develop their skills incrementally in a systematic and practical way. They are intended to complement the Law Society's existing programme of training in areas such as Legal Writing in both Chinese and English, Legal Research skills and Analysis of legal problems. Whilst the new workshops will be offered at the same low fee unchanged by the Law Society since 2000 they will attract CPD points enhanced by 25% because of their interactive and small group delivery method and will be offered by some of the most experienced practitioners in their particular fields.

As we move into a new era, new needs call for new modes of delivery of legal services and also a redefined role that a solicitor should play in ensuring cost effective and quality service.

I would like to take this opportunity to commend the Chief Justice in setting up a working party to look at civil justice reform. The Law Society welcomes the Interim Report and Consultative Paper on Civil Justice Reform produced by the Chief Justice's Working Party. Many of the recommendations are

mirrored in the Law Society's own Working Party report which contemporaneously was studying many of the same issues. We did not, however, necessarily come up with the same solutions but we shall be publishing our Working Party's Response to the Consultative Paper as soon as our working party has considered this 300 pages long Interim Report.

The defects which are identified in the present system include the high cost of litigation, long delays and a lack of equality between litigants who are wealthy and those who are not. The report sets out to deal with such hurdles by those seeking access to justice. The Law Society submits that giving solicitors rights of audience in the higher courts would go a long way to achieving this noble cause.

By permitting competent solicitor advocates to appear in the higher courts if they wish to do so and their clients agree, will go some way towards ensuring that Hong Kong in future has an enlarged pool of good lawyers in which competition over ability and fees will play a role in the selection of advocates. A recent survey of our members revealed an overwhelming majority in favour of higher rights of audience and we owe it to this generation and those yet to come to pursue this issue. What we are asking for is not for the benefit of the 5,000 members of the Law Society but for the benefit of the users of legal services in Hong Kong.

At the risk of repetition, I would like to emphasise that our proposals will not sound the death knell of an independent bar. Nor will they necessarily mean redundancy for many members of the junior bar. There will, within our common law, adversarial system always be a place for an independent bar of advocates and it is certainly not the wish of the Law Society to discourage that.

We strongly ask the Administration to give serious thought to the introduction of legislation in Hong Kong comparable to the Courts & Legal Services Act in England whereby the decision as to who may appear before the courts is made by the legislature and the professions based upon accreditation of ability and experience.

Furthermore, the Law Society believes that the incorporation of solicitors' practice and the formation of "group practices" will contribute greatly to operational efficiency and thus cost saving congruent to the recommendation of the proposed reforms. We are still engaged in discussions over the drafting of regulations which will permit solicitors to incorporate their practices or to participate in a group practice sharing overheads whilst retaining their independence as law firm members of the group. I hope that both these initiatives will be available shortly to members.

Professional indemnity cover for solicitors is provided under a mandatory mutual scheme that has been in place for many years. It was the target of criticism at the time of renewal in September when members' contributions were seen to be greatly increased from the level of previous years. The reasons for the increase were two-fold – an unenviable record of claims arising in particular from conveyancing transactions post abolition of scale fees and a hardening insurance market worldwide. Unfortunately there were those who attempted to make political capital out of the situation and ill-informed criticisms did little to ease the burden upon members.

The Law Society has agreed to undertake a review of the Professional Indemnity Scheme and this is currently underway. The purpose of the review will be to ascertain what is best for the profession and the public. Whether it

be a retention of the existing scheme with modification or demutualisation remains to be seen. Those who have been attracted to the Qualified Insurers Scheme adopted by the Law Society of England & Wales in which firms find their own insurance on the open market may be less enthusiastic towards demutualisation in the light of the worsening world insurance market and the fact that a number of insurers in England have withdrawn from the scheme and those remaining show all signs of increasing premium levels substantially when the majority of renewals take place in late 2002.

There are two other areas of concern to the Law Society. These are the difficulties which have unexpectedly arisen from judgments relating to the attestation in the past of documents by companies of which due execution can no longer be proved and the problems which are still causing headaches for the profession over lost or missing Government grants. These are issues over which solicitors have little, if any, control but which are involving the profession in a great deal of expense and embarrassment. I do urge the Administration to proceed with all haste to implement the remedies to these problems with which it has been grappling for some time. The practice of law is difficult enough without having it made more so by circumstances which are beyond our means of control.

Finally, Chief Justice, it remains for me to wish you and your fellow judges a happy and productive year in which controversy and dispute if they must appear, will not divert you from carrying out your judicial duties with the fairness, impartiality and erudition that we have come to expect of Hong Kong's Judiciary.