

Chief Justice, Your Lordships, Your Honours, Your Worships, Ladies and Gentlemen.

I attended a meeting in Hong Kong in November of last year. At that meeting were the Master of the Rolls of England and Wales and the Chief Costs Judge from that jurisdiction. The distinguished visitors were present in their capacity as members of the Civil Justice Committee of England and Wales. The issue under debate was the cost of bringing legal proceedings. Their lordships were on a fact finding mission. Their visit was part of a series of visits to several jurisdictions to enable them to prepare a report. Many aspects of the component costs involved in litigation were analysed. Gripes were exchanged. Models were examined. Experiences were compared.

From that meeting it was clear to me that the intended savings on legal costs resulting from the Woolf reforms has not been achieved in England and Wales. Whilst an emphasis on dispute resolution and effective case management has had a positive effect, the uncertainties emanating from a wholesale change in the rules has meant that costs have remained high and in some cases the cost had increased. The lesson for Hong Kong was clear. The Hong Kong approach in copying the beneficial changes from England and Wales and inserting them into the framework of the current High Court Rules is better. The High Court Rules Committee is already looking at the first and second set of changes in what is to be a series of amendments. I am confident that these changes will

have a beneficial effect in bringing about cost reductions through better judicial case management and more efficient procedures.

It is good to learn lessons from other jurisdictions. What is even more gratifying, however, is to learn that your own system has elements which those overseas envy and intend to copy. A lot of discussion at our meeting centred around the legal aid system in Hong Kong. Our eminent UK visitors were very impressed with the Supplementary Legal Aid Scheme established in Hong Kong. S.L.A.S. is a system by which proposed litigants whose income exceeds the rigid confines of legal aid limits can have access to the courts under a scheme which requires a successful plaintiff to pay back a proportion of his recovery of damages into the fund. The Chief Costs Judge commented that the Supplementary Legal Aid Scheme was the most positive example from any jurisdiction which he had visited of a scheme which appeared to have merit and was worth considering copying. It is my view that in the Supplementary Legal Aid Scheme, we have something upon which we can build to ensure that in Hong Kong all persons can have access to the courts notwithstanding the high costs. What needs to be done is to extend the category of actions for which Supplementary Legal Aid can be granted to include the vast majority of causes. The second step would be to increase the limit of personal disposable income above which litigants are excluded from S.L.A.S. There is no reason in an affluent society like Hong Kong why the middle classes or, indeed, every

potential litigant should be denied access to the courts because of the cost. If a proper assessment of the merits of claims, the possibility of recovery and the amount of any award is made prior to the granting of a legal aid certificate in the knowledge that a proportion of the award will be paid back into the scheme, then the operation of the scheme would be self-funding. Despite a Government deficit which, anyway, appears to be diminishing rapidly in the current economic upturn, the seed money required for the extension of the S.L.A.S. scheme is well within the Government's budget. Hong Kong has the ability to take a tremendous step forward in enabling access to its citizens to justice through the court system regardless of their financial means. It is an opportunity to take a bold step and create an example which will be envied throughout the world.

A question worth considering is, who, apart from Government, would be able to take on the burden of funding litigation and the risk involved. The traditional Hong Kong approach has been that this is borne by the litigants themselves. In a system where the successful party recovers the costs of litigation from the losing party, this is a sensible approach.

One alternative is the insurance industry. There has been a recent experiment in United Kingdom whereby personal injury litigation is subsidized by the insurance industry through a concept known as "after the event of insurance"

together with a system of “conditional fees”. From my meeting, however, it was clear that the UK experiment has not been a success. Legal Representatives under a conditional fee arrangement are entitled to a success fee in addition to their normal fees paid at the end of the case by the unsuccessful litigant. However, the success fees have been reduced to a level of around 10% which do not provide an incentive for waiting to collect on fees. Furthermore, the collecting of the success fee itself has spawned its own disputes and a whole series of litigation. It is not an experiment which, in my view, is worth copying.

Some people look to the North American system of contingency fees as being a way forward. It is a subject matter which together with conditional fees has recently been the subject of a review by a Law Society working party. The subject is also being studied by a Law Reform Commission Committee. The Law Society’s working party members had divided views although the majority were not in favour of either system. Indeed it is difficult to see how in a split profession a contingency fee system would work. I believe that small solicitors firms would lack the financial resources to fund their client’s litigation and I look suspiciously at the lack of impartiality that would stem from an arrangement where the lawyer has a stake in the outcome of the case. One aspect of the debate which the profession has looked at frustratingly is the rise in the number of claims handled by recovery agents who operate as advisors to personal injury victims on a “no-win no pay” basis. These persons lack legal

training and are uninsured. Whether there is any benefit to the general public in such a system remains to be seen. What is needed, however, is a study of the ethics and values of those who operate outside the legal profession in providing legal assistance and do not provide the protection which members of the public enjoy when instructing solicitors.

It is also worth considering what alternatives to litigation exist. It is important in a civilized society that citizens have access to speedy and impartial procedures for resolving their disputes. If they do not, alternative methods will be found, be they legal or illegal. Hong Kong does have other legal alternatives. Arbitration is extremely well established in Hong Kong. Mediation is a path which needs to be developed. In this regard, the Law Society is playing its part. We have established our own criteria for accrediting mediators. We have also established a list of accredited mediators and a working party is currently looking at ways of adding more persons to that list and to create the machinery to promote mediation.

Further savings in costs can be achieved through computerisation. Solicitors in Hong Kong have looked enviously at their colleagues overseas in jurisdictions such as Singapore where pleadings are filed and judgments are delivered electronically. It has for a long time amazed me that solicitors firms are still obliged to employ armies of legal clerks who circulate around Hong Kong filing

documents, serving affidavits, bundling exhibits, waiting in line to pay fees, queuing to fix court dates, when all of these could be achieved from the solicitors' desktop computer. I am pleased to report that this issue is now being tackled. The Law Society and the judiciary are currently looking at standardising computer systems used by the judiciary with those used by solicitors' firms and we are confident that a restricted pilot scheme can be commenced within the current year. My personal hope is that it will be enlarged very quickly and that photocopy machines the size of drink vending machines will become redundant and the sight of van loads of box files being carted into court rooms will be a thing of the past just like telex machines and carbon copy paper. The Law Society evaluated some time ago a system for issuing electronic signatures. These can be allocated to each solicitor to ensure that the source of electronic documents can be verified. The plan had been put on the shelf in the expectation that members would be slow to use it until there was a necessity for it. I am pleased to say that in the light of the recent approach from the judiciary to implement a system of electronic filing that this plan has been reactivated and that funds have been allocated to implement it. I expect it to be in place before the end of this year.

Let us not forget, however, that within the solicitors practice itself there is scope for cost savings to be made. Efficient use of time; effective systems of case management; avoidance of duplication and verbosity: all of these can achieve

cost savings in the litigation process. This is recognised by Law Society members. The incentive for cost reduction is prominent where there is a keen profit generating motivation. Successful firms already have systems in place to ensure that costs are kept to a minimum. All of the factors are not, however, within the solicitors' control. In our service based economy, talented manpower is at a premium and must be paid for. Hong Kong rents are amongst the highest in the world. Then there is the cost of insurance. The Hong Kong public benefits from compulsory professional indemnity cover provided by Hong Kong solicitors. We are one of the very few professions which make it mandatory. Whilst others choose in their prudence to take out insurance, they are not obliged to do so as a condition of practice. However, the cost of such insurance is becoming exceedingly high. At an Extraordinary General Meeting of the Law Society in November 2004, the profession voted in favour of a scheme requiring each firm to place their insurance independently in the private market and to wind down the Fund. This has caused the Administration concern. In my view, such concern is unnecessary. The course of action chosen follows an example which has been successfully set by the Law Society of England and Wales. One aspect of the Fund was that the requirement to keep it afloat meant that every solicitor in Hong Kong was effectively underwriting the insurance cover of every other solicitor on a mutuality basis. That is a burden borne by no other profession in Hong Kong or anywhere else in the world. It is an obligation which should be undertaken by Government along

with its obligation to vet the solvency of those insurers allowed to operate in Hong Kong. Implementation of a Policy Holders' Protection Fund has been under review by the Government for all persons in Hong Kong who take out insurance of whatever nature. It is incumbent on the Government to introduce a Policy Holders' Protection Fund as soon as possible. It should not expect lawyers to underwrite the liquidity of each others' respective insurers.

Chief Justice, the cost and efficiency of the judicial process is of concern to all officers of the court i.e. the solicitors' branch of the profession. I assure you that you have, in the Law Society of Hong Kong, a most willing partner in achieving the objectives of your Civil Justice reforms. I trust that when they are fully implemented the Hong Kong legal system will continue to be viewed by visiting overseas lawyers and judges with admiration and respect.

I thank you and wish you all well.