

## **Speech of Peter LO, President of the Law Society of Hong Kong**

Each year we celebrate the Opening of the Legal Year to reaffirm the important role of the law in Hong Kong.

A successful legal system is one which is commonly acknowledged as part of the civilized order of society. Advances will only be made where constructive activities may take place without let or hindrance.

In Asia, the Hong Kong legal system can be regarded as having a relatively long history. The Law Society of Hong Kong was incorporated in 1907, and the year 2007 marks its centenary. In early days, Hong Kong was still a traditional Chinese society, but its residents quickly accepted a strange and foreign legal system, and relied on it to protect their rights and settle their disputes. This was very much due to the work of our forbears within the Society. They worked amongst the people of Hong Kong, and helped to make their clients understand and appreciate the workings of the legal system, and succeeded in building confidence in and respect for the system. From old documents and law reports, we can see that the law protected rights and settled disputes. We can also see that many disputes of a traditional Chinese society were settled by the Hong Kong Courts, such as disputes over the administration of an estate by members of a large family. In the conduct of business and the disposition of property, the Hong Kong legal system made substantial contributions.

However, a society also has to address the darker sides of life. As Hong Kong progressed, our systems were also improved. For example in tackling the problem of corruption, Hong Kong achieved significant results by a combination of public will and effective laws. But we should not be complacent, and should diligently continue to eliminate our shortcomings.

In any society, unfortunate incidents will inevitably occur, and many such incidents cause irreparable damage in human terms. When I was a trainee solicitor, then known as an articled clerk, I helped to work on a case where a person died as a result of a traffic accident. At that time we represented the widow of the deceased in claiming compensation. As happens in these cases, there was a process of negotiation over the quantum of damages. When we had reached the final stage, the widow of the deceased suddenly said: it is not money that I want, it is my husband. After several

decades I can still feel the pain and sorrow of the client. The client eventually came to terms with her tragic situation, but I still feel sad at what happened to her. What I learnt was that in such situations the law could only offer some material compensation, but beyond that the law is powerless. But even so, the way that a lawyer handles the situation could have an impact on the client's feelings, and could perhaps even afford the client a degree of consolation.

A more complicated situation arises in criminal cases. From a purely technical point of view, the lawyer has only to understand matters such as the elements of the charge, the strengths and weaknesses of the evidence and the credibility of witnesses. Under the existing system, both the prosecution and the defence have clearly defined roles. Where duty has been duly performed by the parties concerned, the system is responsible for the result. There are traditional codes and rules regulating the conduct of lawyers in such cases. The lawyer essentially has to play by the rules.

However, live situations are often very complicated. Many clients proclaim their innocence, and offer case material full of contradictions, and the lawyer has to put the case into some sort of order. In the process the client will often have strong views and definite instructions, but if the lawyer oversteps the mark, he is liable to be guilty of perverting the course of public justice. The work of a lawyer handling criminal cases is far from simple.

But this kind of work still requires to be done. Our system is designed to prevent people from being wrongly convicted. This is an essential human rights protection. Unless protected by safeguards built into the system, an individual confronted with the law enforcement authorities will be in a very weak position. For that reason our system seeks to provide "equality of arms" between prosecution and defence.

An essential part of this arrangement is legal aid in criminal cases. I bring out this topic because the government and the legal profession are conducting a thorough review of the system.

The existing system was established many years ago, and is a very simple arrangement. After many years of experience, it is evident that the system does not adequately address the volume of work undertaken by the defence in an assigned case. The result is a great disparity between the amount of work and the remuneration given.

I believe in the process the parties have already reached certain understandings in relation to basic principles, and it is our hope that on the basis of those principles, practical steps to implement an improved system will be quickly put in place.

Legal aid in criminal cases may seem to be a topic remote from the daily life of an ordinary person. But we must appreciate that a person charged with a criminal offence is frequently unable to afford legal advice to enable them to assess the situation and the problems that they face. There will be people who are guilty of the offence with which they are charged, there may be those who are not guilty. And in many cases there is a question of the degree of gravity, and there are also misguided young people who have for one reason or another gotten into trouble with the law. As a matter of public justice and as a matter of public policy as to how offenders should be treated, criminal cases should be handled with care and attention to individual circumstances, with the lawyers playing a role in assisting the court in coming to a verdict and sentence appropriate to the individual case, so that justice may be done and human failure may be remedied. For these reasons legal aid in criminal cases is an essential element of the legal system and its problems should be addressed by all concerned with fairness and with due regard to its importance. I therefore take this opportunity to stress its importance, in the hope that improvements may be put in place as soon as possible. In conclusion I would also wish you all a fruitful and happy new year. Thank you.