

FAREWELL SITTING SPEECH – HARTMANN JA 28TH JUNE 2012

1. The last two years have seen a flurry of judicial activity, almost like a game of musical chairs, as many of our experienced and senior judges began to reach their retirement age. The judiciary, like every other institution is going through the perennial and natural phase of effusion and regeneration. The process will hopefully provide strength, dynamism and stability to the administration of justice as the judiciary and the legal profession move forward to face the new challenges that will confront us in the coming years.
2. It is against this backdrop that we are gathered this morning to pay tribute to one of the nicest judges to grace our bench. It is a befitting occasion to thank a man who for over 21 years has rendered with dedication and humility rendered service to the community in general, and to the administration of justice in Hong Kong in particular.
3. Hartmann JA was born in Bombay {as it was then called} but raised and educated in Rhodesia, now called Zimbabwe. He obtained his LLB degree in 1967 from University of London whilst studying law at the University College of Rhodesia. In 1971 he commenced his practice as an attorney, notary public and conveyancer working as a partner in a firm in Salisbury, as the capital was then known. I am told

that he was a keen actor both of stage and television, apart from being a solicitor, though perhaps in reality there may be little difference between the two!

4. It was courtesy of the world of theatre that Hartmann JA met his wife Melanie. They were both selected for the musical play Fiddler on the Roof, and this is where Hartmann JA first revealed his qualities of being a good judge by choosing to play the role of a Russian anarchist!!
5. In 1983, he came to the shores of Hong Kong where he joined the Attorney General's Chambers, as the DOJ was then known. I am told he specialised in international criminal law. I am told by reliable sources, who understandably wish to remain anonymous, that the reason why the family uprooted themselves and left Zimbabwe was because Hartmann JA courageously defended some persons who had the temerity to annoy the Government of the day. For that courageous stand, Hartmann JA was fined for being in contempt of Court. I suspect he is probably the only judge amongst the judges assembled today who has been on the wrong end of a motion for contempt!
6. In the Legal Department, Hartmann JA quickly moved up the ranks to become Deputy Principal Crown Counsel in 1989. However in 1991,

he decided to switch places from the Bar table to the Bench and was appointed a District Judge. His undeniable ability and his dedication and hard work as a judge made him a very popular judge in the eyes of both litigants and practitioners who appeared before him. He began to sit as a Deputy High Court judge a few years thereafter.

Unsurprisingly, he was appointed a Judge of the High Court in 1998, where he heard a number of important and landmark cases in what was then the new and developing jurisprudence in the area of administrative and constitutional law. He was appointed the Judge in charge of that List and heard most of the Judicial Review cases in the years immediately following the handover in 1997.

7. An overview of some of these cases is worth recounting:
 - (a) in 2001, in *Equal Opportunities Commission v Director of Education* he ruled that the Director of Education in exercising his discretion under the SSPA system was acting discriminatorily and directed to remove such discriminatory practices;
 - (b) in 2004, he set aside a search warrant issued by the ICAC to raid 7 newspapers, which was widely recognised as a victory for Press freedom;

- (c) in *Leung TC William Roy v Secretary for Justice*, he found that the unequal age of consent between heterosexuals and homosexuals was unconstitutional against the Basic Law and the Bill of rights;
- (d) in 2006, in *Leung Kwok Hung & Anr. v Chief Executive of the HKSAR*, he declared that the procedures for covert surveillance and wiretapping were unconstitutional;
- (e) more recently, in March 2012 in *Citic Pacific v Secretary for Justice & Anr.* Hartmann JA in delivering the judgment of the Court of Appeal held that the concept of partial waiver of legal professional privilege existed in Hong Kong. He further went on to find that if by reason of inadvertence, mistake or even surreptitious conduct by third parties privileged information came into the hands of prosecuting authorities, privilege was *not* lost.

8. Given his rich knowledge and varied experience of both civil and criminal law, Hartmann JA contributed and shared the benefit of that depth of experience outside the arena of his Courtroom. He was actively involved in a number of related judicial and quasi-judicial work which included the following:

- (a) 1998-2000: Chairman of the Insider Dealing Tribunal;
- (b) 1999- to present: Chairman Steering Committee on Family Mediation;
- (c) 1999- Present: Chairman Steering Committee on the Pilot Scheme for the Reform of Ancillary Relief Procedures;
- (d) 2000-2004: Member, Working Party on CJR;
- (e) 2004- Present: Member, Steering Committee on CJR;
- (f) 2010- Present: Advisory Board of the Centre for Rights and Justice at Chinese University of HK.

9. Hartmann JA has rightly earned the reputation as a judge who was firm but fair; a judge who was courteous, patient and accommodating to all litigants, lawyers and anyone who happened to have any dealings in his Court. In particular, he was kind, considerate and understanding with his own staff, who have served him over the years.

10. He had a deep and abiding sense of fairness and his landmark judgments delivered in his trademark succinct, direct but easily understood style has left an indelible mark on the jurisprudential landscape of the HKSAR.

11. In the field of family law, which required a judge who had to be able to make delicate and yet sometimes hard decisions, Hartmann JA

embodied the qualities of a humane and empathetic Judge who had a good instinctive feel for and sense of right and wrong. In short, he was a judge who possessed a healthy measure of common sense which he applied in all the cases he adjudicated upon.

12. He has been described as a listening and caring Judge. His judgments are such that almost everyone who comes out of his Court does so with a feeling they have won something, even though it may not be everything that they may have wanted or asked for. At the very least you felt that your arguments on behalf of your client have been carefully considered.

13. He readily recognised and easily understood the sensitivities and urgency that are usually involved in matrimonial disputes, particularly when they involve the interests of children. Hartmann JA was therefore very flexible and made himself available to hear urgent matrimonial cases at very short notice. These usually were cases which he felt might need or benefit from his guiding hand in 'fixing or steering or nudging' the case along the right direction. I am reliably told that on one occasion he was however perturbed when a firm of solicitors wrote to his clerk asking for an expedited hearing and

ending on a rather strange and ambiguous note: “*Any lunch time will do!*”

14. He was known to be prepared to sit long hours, sometimes past 7 pm in order to complete a hearing; Saturday morning hearing were not unknown with this judge. One can see how popular this must have made him with matrimonial practitioners who had to work overtime beyond normal court hours without the benefit of a refresher as a reward!!

15. Although we say farewell to him as a JA of the Court of Appeal today, Hartmann JA will still be with us after his retirement. He was appointed a NPJ of the CFA in 2010. I understand he will be coming to sit and hear some appeals in the CFA later this year.

16. Hartmann JA has been one of the Judges of the International Hague Network of Judges since its establishment. He was actively involved in developing the Hague child abduction jurisprudence since Hong Kong became a signatory in 1997. I believe it is both a recognition of the importance of Hong Kong in the region as well and an accolade and acknowledgment of the respect and esteem with which Hartmann JA is held internationally that he has been appointed to be the representative of the Asia Pacific Regional office for the Hague

Conference on Private international Law. This is high praise and recognition indeed!

17. Many of you may not be aware that Hartmann JA is also an accomplished author in the mystery/thriller genre. Many of his books reflect his background and experiences in Zimbabwe and Hong Kong. One of his novels, A Game for Vultures was made into a movie in 1979 starring Richard Harris and Joan Collins!!
18. Clearly our Judge is a man of many talents. I hope that in his spare moments in his retirement he may perhaps find the time to write about his experiences on the bench in Hong Kong with, I would venture to suggest, a frank expose on the lawyers who have appeared before him. I am sure that will be a best seller with the legal profession in Hong Kong, if for no other reason than to find out whether they have been praised or panned!!
19. Over the years, Hartmann JA has been a strong supporter of the Bar and the Bar has enjoyed an excellent working and personal relationship with you. We have worked together on many matters that have contributed to the better administration of justice in Hong Kong. To put it simply, you have been a friend of the Bar and I am confident that we will continue to be friends.

20. On a final note I would like on behalf of all the members of the Bar,
to wish you and Melanie many happy years of well earned rest,
enjoyment and memorable moments in the autumn years of your lives.
The Bar will not say goodbye to you but would instead say that we
look forward to seeing you again soon and often!

Mr. Kumar Ramanathan SC
Chairman
Hong Kong Bar Association

28th June 2012

