

THE CHAIRMAN'S SPEECH AT

THE CEREMONY OF APPOINTMENT OF SENIOR COUNSEL

10 JUNE 2017

Chief Justice, my Ladies, my Lords, Secretary for Justice, Mr President of the Law Society, fellow members of the legal profession, ladies and gentlemen:

Abraham is a perfect gentleman. This is the answer I invariably received whenever I asked people how they would describe Abraham. I used to believe that every human being has his dark side. I must be wrong at least insofar as Abraham is concerned.

To illustrate how perfect Abraham is, I can do no better than to quote *in verbatim* what one of Abraham's former pupil masters said about him, and I quote: "*He is too square to have dirt. I tried to teach him to swear when he was my pupil and I failed. I succeeded in teaching Queenie Lau, Eva Sit, Janet Ho to swear, but not Abraham.*" End of quote.

Fortunately, at the end, I managed to get a few persons who know Abraham quite well to come to my rescue. They revealed to me some less well-known facts about Abraham.

It was previously unknown to me that Abraham appears to be very conscious about personal hygiene; and he can take it to the extreme. When he gets into a lift, he will try his very best not to touch a lift button with his own fingers. Instead, he will either take out his key or a handkerchief before using it to hit the button – but even then only in a swift, and rapid motion. Abraham doesn't like to touch door handles either. One of his former pupils remembers distinctly that, once when he was walking back to chambers with Abraham, they had to go through a huge set of glass doors. Abraham looked slightly worried about this prospect, and by the time he reached the glass door, he ended up standing directly in front of his pupil with his arms crossed. He just turned, looked at his pupil and said "Umm... would you mind...?". His pupil naturally pushed the door open for him. Upon hearing this incident, I am convinced that we should introduce paid pupillage.

The irony is that, as I was told, Abraham's old chambers were absolutely filthy. Another pupil of him recounts that, she once dropped her cardigan on the floor without knowing and it stayed there overnight. She picked it up the next morning and wore it the next day. A few days later, she found a series of bug bites on her arms, which she eventually attributed to the fact that his floor had not been cleaned probably since he commenced practice. I take a firm view that, not only pupils should be paid, pupil masters should also be ordered to obtain health insurance for their pupils.

As a perfect gentleman, it is hardly surprising that Abraham loves good food and clothes. Abraham is undoubtedly one of the best dressed men at the Bar. Some of his suits were made by tailors flying all the way from Italy to Hong Kong. I was told that he never takes off his suit jacket at work, and he has never been seen wearing jeans or sneakers. He would order take-away lunch from Ye Shanghai or Cova at Pacific Place only.

If my survey is correct, Abraham is the 91st Senior Counsel appointed after China's resumption of sovereignty over Hong Kong in 1997. This year is the only time when only one silk has been appointed. This has naturally generated some discussions within the Bar and the legal

profession. In my view, the fact that only Abraham succeeded this year shows that appointment of Senior Counsel is a rigorous exercise, and only the best will succeed. However, one of my chamber-mates pointed out to me one significant problem caused by the fact that there is only one appointment. And that is no one else will share with Abraham the bill for the cocktail party to be held at the Hong Kong Club soon. I do sincerely hope that this will not have any negative impact on the quality of the food and drinks to be served!

On a more serious note, the fact that only those who are of utmost ability and integrity can attain the status of Senior Counsel highlights the high standard that the Judiciary reasonably and legitimately expects from members of the Bar. It is vital to our justice system that Judges are able, without question, to hold the utmost confidence in the integrity and character of each Counsel appearing before the Courts. As such, each Counsel carries a significant burden. It is critical for every Counsel to discharge his responsibilities to the fullest possible extent in order to assist the Courts to discharge their constitutional duties under the Basic Law.

This year marks the 20th anniversary of the establishment of the Hong Kong Special Administrative Region. It appears that there are still different views on how one should describe the Judiciary's role under the Basic Law. For example, we still hear from time to time statements to the effect that the principle of separation of powers does not apply in Hong Kong. These statements must of course be construed in their context. The discussion should not become a game of words.

Under the Basic Law, it is correct, and no one can or should challenge that all the powers enjoyed by the HKSAR, including executive, legislative and judicial powers, are given or delegated by the National People's Congress of the People's Republic of China. But the point is, the Basic Law then goes on to distribute and allocate these powers to different bodies. In particular, the Judiciary, consisting of the Courts of the HKSAR at all levels, has been specifically authorized to exercise **independent** judicial power, including that of final adjudication. Article 85 provides that the Courts of the HKSAR shall exercise judicial power **independently**, free from any interference. The separation between the exercise of judicial and legislative or executive powers is clear under the Basic Law.

Why is this separation of power as prescribed by the Basic Law so important? In the Privy Council judgment in *Ferguson v AG of Trinidad and Tobago* [2016] UKPC 2, Lord Sumption held at paragraph 16 that, as applied to the autonomy, or independence, of judicial functions, the separation of powers is, quite simply, an aspect of the Rule of Law. This remark must apply equally to Hong Kong.

In this respect, the Judiciary's function has not changed at all notwithstanding China's resumption of sovereignty over Hong Kong. In the course of preparing this speech, it occurred to me that it might be interesting to find out what sort of cases the Hong Kong Courts were handling 100 years ago in 1917. When I checked the law reports, I came across the judgment of Sir Rees-Davies CJ in *The Chun Loong v Martini* [1917] HKLR 44. It was a civil case concerning an application to set aside service of writ out of jurisdiction. The defendant argued that section 42 of the then Code of Civil Procedure was *ultra vires*, as the powers of the colonial legislature was limited by clause 9 of the Charter as embodied in the Letters Patent of January 1888. The argument was rejected upon a proper construction of the relevant clause in the Letters Patent, in particular, the phrase "*to make laws for the peace, order and good government of the Colony*".

Hong Kong at present is, of course, very different from Hong Kong a hundred years ago. In 1917, Hong Kong had a population of around 535,000; its population is now more than 7 million. In 1917, Hong Kong was a British colony; it is now a Special Administrative Region of the People's Republic of China. However, what has not changed is that the role of the Hong Kong Court is to uphold and maintain the Rule of Law; and to ensure that no one, including the executive or the legislature, will be above the law. This was what our Courts did a century ago as demonstrated by the precedent that I mentioned. This is what our Courts are doing now. And this is what our Courts will do in the future.

To maintain the Rule of Law in Hong Kong requires the general public's trust and confidence in our justice system. It is unfortunate that, in recent years, the Judiciary has been subject to misplaced and misconceived attacks and criticisms. It is the duty of every member of the legal profession, wherever appropriate, to try his best to clarify to members of the public any misconception or misunderstanding about the role of the Courts, and to explain to them how Judges carry out their work in practice. I read from the news that, yesterday, in a high profile criminal case, the defence Counsel submitted to the magistrate that it is fortunate

that his client is to be tried before a magistrate, and not a jury; and, at one point, he said to the magistrate “*unless you are yellow*”. The Counsel subsequently explained that he was referring to the prosecutor and not the magistrate. In any event, it is unhelpful and unbecoming for any Counsel to utter such ambiguous statement in open court. Counsel must not say or do anything which is liable to give a false impression that politics are somehow relevant in Court proceedings. As Lam VP said in *Chief Executive of HKSAR v President of the Legislative Council* [2017] 1 HKLR 460 at 481, §68, “*It is important that we keep politics out of the judicial process*”. We must let the public understand that, in judicial proceedings, the Judges will consider the law and the evidence only: nothing more, nothing less.

At the end of the day, the best and perhaps the only way to maintain people’s trust and confidence in our justice system is to show to them that our Courts will always deal with cases fairly and efficiently. To achieve this goal, it is incumbent upon every member of the legal profession, in particular members of the Bar, to provide the best possible assistance to the Courts. The best possible assistance means assistance provided in both a competent and an honest manner. Abraham serves as the best example in this respect.

Abraham's family and friends should be very proud of his achievement. On behalf of the Bar, I wish to offer my congratulations to Abraham and his family, in particular, his wife Veronica, and his two kids Noah and Sasha. I also wish Abraham every success in his career in the years to come.

Paul Lam SC