

**Speech of the Chairman of the Hong Kong Bar, Winnie Tam, SC,
at the Prosecution Week 2015 Opening Ceremony, 23 June 2015**

Secretary for Justice, Director of Public Prosecutions, President of the Law Society, Distinguished Guests, Ladies and Gentlemen,

I am honored to be a speaker at the opening of the Prosecution Week of 2015, and delighted to see the participation of members of the public, students, and all the governmental departments pivotal to law enforcement in Hong Kong. I have been given to understand that the purpose of this week-long event is to promote the Rule of Law, and to increase the awareness of civil rights and civic duties. These are topics dear to the heart of leaders of the Hong Kong Bar.

The Rule of Law has been a much talked about subject within the past year. It is not a rule or a law in itself, but a doctrine of political morality that aims at ensuring the correct balance of rights and powers between individual and the government. Law is an instrument for exercising power by the ruling government, as much as a means of protecting the people against arbitrary and abusive use of powers. The balancing of rights and powers involves the application of concepts including “the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power”, such that a man can be punished for a breach of the law, but he can be punished for nothing else, “equality before the law”, such that no one is above the law, and both officials and citizens must obey the same law.

We all know that Rule of Law does not only mean “the law must be obeyed”. However, at the height of the Occupy Movement, I was alarmed to read of suggestions made in an article written by a law academic whose name I cannot now remember, that the rule of law

is a doctrine that applies not to regulate the behavior of citizens, but that of the government only. In so far as it is suggested that different standards of behavior under the law might apply to citizens on the one hand and to the government or their servants on the other, I cannot possibly agree.

Modern theorists such as Raz added more content to the concept, including the independence of the judiciary, and the right to a fair hearing, access to justice, the courts power to review the implementation of other principles, and that the discretion of the police and prosecution agencies be guarded against perversion of the law. These all help to ensure freedom in society. However, freedom, in turn comes with responsibility in the form of civic duties.

Hong Kong enjoys a highly transparent legal system that respects the dignity, rights and liberties of individuals. Hong Kong also enjoys an independent judiciary, highly respected in the region and around the world, that apply the law, both in letter and in spirit, and adjudicates on any alleged violation to uphold its supremacy.

Not least due to the highly charged political events of the last year, it has become particularly important for the public to gain a better understanding of the role of the various departments and their respective responsibilities in upholding the Rule of Law in Hong Kong. These responsibilities involve the various law enforcement departments and institutions engaging in investigation, arrest, further investigation and collection of evidence, the submitting of evidence for legal advice, the deliberation and consideration of the material by the prosecution division, the preparation of charges, the prosecution process, the appeal process, and the handling of persons under custody.

I had the privilege of serving on the ICAC Operations Review

Committee for some 6 years in the past. Even as a lawyer myself with some past experience in handling criminal cases, during the 6 years when I had a sneak peek of the investigation operation in all the major cases, I never stopped feeling fascinated by the many layers of work that were involved in the process of bringing a suspect to justice, and the degree of care that goes into any decision to prosecute or not to prosecute.

I hope I can be forgiven for feeling indignant when I read unjustly critical remarks that are sometimes callously passed by members of the public on social media, or even by public figures wanting media attention, criticizing prosecution decisions made, or even the outcome of trials, apparently without even attempting to understand the process of justice. At times, decisions to prosecute were readily characterized as political not made independently, and acquittals would be relied on to support the view that the decision to prosecute was improper in the first place. Remarks of this type, if not recklessly misleading, were often based on a poor understanding of the system and procedure of criminal justice.

By the same token, members of the public, commentators and public figures who felt a sense of frustration that occupiers escaped punishment were heard publicly criticizing judges for acquitting defendants after trial, suggesting these were signs of decline of the rule of law or a lowering standard of police or judicial competence. Ironically a similar kind of criticism against judges was openly voiced by those who did not approve certain court orders granted last year to clear the occupied streets. These comments, particularly from those who should know better, are most regrettable. As the Chief Justice of Hong Kong had pointed out in a speech he made earlier this year in the English Bar's Annual International Rule of Law lecture, the existence or non-existence of the rule of law cannot be gauged by the outcome of cases alone. The outcome of cases are

dependent upon legal merits and on the evidence received at the hearing. The merits are in turn analyzed in reasoned judgments.

To openly criticize the judges for their decisions without a proper understanding of the legal analysis and the reasoning, and to criticize the law enforcement departments without properly appreciating the challenges and constraints faced by them is to do injustice to our legal system.

Our system of criminal justice depends upon the industry, knowledge, independent judgment, integrity, and an unwavering commitment to the Rule of Law particularly by officers involved in the prosecutions division. Only in the last month, the ability, integrity and professionalism of 4 senior lawyers in the Department of Justice, three of them from the prosecutions division, were honoured by their appointment to the Inner Bar. For their commitment to upholding justice and fairness, each of them deserves the recognition and accolade that the title Senior Counsel signifies. I trust they will continue to serve the public with an even greater sense of mission and responsibility, and as leaders and role models within their own department.

As I explained above, the concepts of Rule of Law, civil liberties and civic duty are inseparable. There could be no ultimate freedom when freedom is without boundary. I therefore consider it apposite for the building of a better understanding to begin from our younger members of society – a better understanding of how these principles are implemented and counter-balanced one against another through the work of the various departments represented here.

Last but not least, I would take this opportunity to extend my warmest congratulations to the prize winners of the slogan competition, and to wish the organizers every success in this meaningful event..