

Honorary Doctor of Laws

The Hon Mr Justice Patrick CHAN

Citation written and delivered by Professor Julia TAO LAI Po-wah

Chancellor:

The rule of law and an independent Judiciary are of vital importance to a free and open society. They are the core values of Hong Kong and have contributed to our success and pride as a world-class city. 1997 was a momentous year for the development of our judicial system. It witnessed Hong Kong's return to China's sovereignty and marked the transition to a new order for our legal system. The transition posed challenges that were both critical and unprecedented.

One important challenge was to uphold and to develop Hong Kong's separate constitutional identity under the "One Country, Two Systems" framework. Another equally important challenge to build and establish Hong Kong's distinctive legal identity, independent of the British Common Law tradition upon which Hong Kong's legal system had been based until 1997. The changes and transformation that were to follow over the next ten years marked a significant chapter in the history of Hong Kong's judicial development, which has received both world attention and respect.

Justice Patrick Chan is one of the distinguished figures who have made an immense and far-reaching contribution to this successful transition. He has played a seminal role in the important tasks of developing Hong Kong's constitutional jurisprudence and establishing Hong Kong's distinctive legal identity during the critical first ten years after our return to Chinese sovereignty.

Justice Patrick Chan graduated from the University of Hong Kong with a Bachelor of Law degree in 1974 and obtained a postgraduate Certificate in Law the next year. He served as a District Court judge between 1987 and 1991, Deputy Registrar of the Supreme Court between 1991 and 1992, and High Court Judge between 1992 and 1997. He was, in 1997, the first local graduate to be appointed Chief Judge of the High Court. He became a permanent judge of the Court of Final Appeal in 2000.

One of Justice Patrick Chan's most significant contributions to the establishment of Hong Kong's distinctive legal identity is his consistent promotion of legal bilingualism in Hong Kong after 1997. As Chairman of the Committee for the Greater Use of Chinese in Courts, he firmly believes that administering the law in a language that the parties can understand is important for ensuring justice. He also sees this as an important step towards the development of a bilingual legal system and the gradual establishment of Hong Kong's legal jurisprudence to support the rule of law. This is an ambitious and far-sighted goal. The tradition of common law has its roots in English and its literature is mostly in English. No other jurisdiction in the world has experience in the use of Chinese in a common law setting. Such a critical development is highly essential to ensure that the common law tradition, in its full vigour, will continue to thrive in Hong Kong, and that our jurisprudence is accessible to the international common law family, to sustain cross-fertilisation and continuous development.

Today, the development of bilingualism in law is progressing steadily, albeit cautiously, to avoid chaos or confusion. Since 2003, under Judge Patrick Chan's supervision, the eminent legal series "Bilingual Common Law Series" has been published in three bilingual volumes on employment, criminal cases, and land-related cases respectively. Other initiatives include the publication of an Anglo-Chinese legal dictionary; the increasing use of Chinese in the courts; and the systematic training of legal professionals in legal translation. Another pioneering scheme which Justice Patrick Chan helped to plan is the development of a specially designed four-week Chinese Enhancement Summer Training Course, offered in Tsinghua University in mainland China each year for the training of Hong Kong judges, to promote legal bilingualism in the courts.

Justice Patrick Chan also believes that the forging of a closer legal relationship between Hong Kong and the mainland since 1997 has been beneficial for more effective and efficient cooperation in law administration between the two jurisdictions. His efforts have led to the setting up of the "Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between Mainland and Hong Kong Courts" in 1999. At the same time, he was instrumental in the establishment of an internship scheme to enable judges from the mainland to be attached for an extended period of time to the courts in Hong Kong, to deepen their understanding of the practice of the Common Law system as well as Hong Kong's legal culture.

In addition to the challenge of developing a distinctive legal identity, another major challenge for the Judiciary is in the area of constitutional jurisprudence. The effective discharge of the constitutional role is often a difficult task for the courts. For Hong Kong, the special challenge is to uphold the constitution and the law and to maintain the enduring values of a civil society. In the first few years after 1997, the courts in Hong Kong, and in particular, the Court of Final Appeal, had to decide a number of important constitutional issues on the interpretation of the Basic Law. By reason of their subject matter, these judgments were inevitably controversial. As one of the permanent judges sitting in the Final Court of Appeal, Justice Patrick Chan has made an invaluable contribution to the establishment of Hong Kong's constitutional identity by fiercely defending equality before the law, constitutional rights and judicial independence during the first critical years of the transition.

As the Chief Judge of the Court of Appeal, Justice Patrick Chan defended the equal right of non-indigenous villagers to take part in village representative elections in an appeal case by a non-indigenous villager in 2000. He upheld the Basic Law provision protecting an individual's freedom to participate in public affairs. Not only did Justice Patrick Chan declare the century-old tradition of disfranchising non-indigenous villagers to be an infringement of the Basic Law and the Bill of Rights Ordinance, but he categorically reminded the government, by way of the Secretary of Home Affairs, that it should not validate village election results returned by means of an election process inconsistent with the law that grants the same and equal right and opportunity to all to take part in public affairs.

Justice Patrick Chan was one of the five judges serving on the Court of Final Appeal who granted right of abode to a three year old boy born in Hong Kong to mainland parents in the famous "right of abode" controversy in 2001. This landmark judgment defended the entitlement to the right of abode of all children born in the SAR to mainland mothers after 1997. Justice Patrick Chan also spoke in defense of the rights of mainland abode-seekers and other foreigners to legal aid in the SAR, reminding us that, "It was a cornerstone of any international city governed by the rule of law to ensure access to justice for all who came under its jurisdiction. These people have to abide by Hong Kong law, their cases are processed in our legal system and within our jurisdiction — they also should be entitled to the protection of our law. It is only reasonable to provide them with legal aid services."

In 2005, Judge Patrick Chan was also one of five judges at the Court of Final Appeal that upheld freedom of assembly in Hong Kong. In this highly contested case, the Court called for the term “*ordre public*” to be removed from the Public Order Ordinance because it gave discretion which was too wide and vague to the Police Commissioner to restrict protests. The judgment further affirmed freedom of peaceful assembly as precious and of cardinal importance for the stability and progress of society.

Today, no one will doubt that the Court of Final Appeal, the apex of the court system in Hong Kong, is determined to perform its constitutional role, and to develop Hong Kong’s distinctive constitutional identity, in a manner that commands respect for our society and confidence in it from the international community.

The law does not stand still, and should not stand still, if it is to retain its vitality and do justice. Rapid social, economic and technological changes in a globalised world have brought increasing demands for the law to be more cost-effective, more accessible and less complex for the citizen. In 2000, Justice Patrick Chan was appointed Chairman of the Chief Justice’s Working Party on Civil Justice Reform in Hong Kong. The overall objective of the reform is to ensure and to improve access to justice at reasonable cost and speed in our society. “Justice delayed is justice denied,” said Judge Patrick Chan. “Court time is a public resource. We have a duty to ensure that this public resource is fairly and efficiently allocated and used.”

The final report of the Working Party, released in 2004, has set out no less than 150 recommendations to reform the rules and procedures in the civil law system, particularly the Rules of the High Court. After lengthy consultations, the reform is scheduled to begin implementation in 2009. It will bring about a positive development in the conduct of litigation in Hong Kong. It will also play a significant role in supporting Hong Kong’s competitiveness and credibility as a financial and commercial centre.

“Justice requires more than just laws; the process whereby justice is attained must be a fair one.” (Raymond Wacks, 2008) Indeed, judges are the sentinels of the process of justice and fair play. The quality of the judges is critical to the integrity and robustness of any legal system, regardless of the legal tradition on which it was founded.

Reflecting on his distinguished service with the Judiciary over more than two decades, Judge Patrick Chan recalled one case that caused him much soul-searching. This case involved a young man who had been found guilty of armed robbery. Under normal circumstances, this would have warranted a sentence of imprisonment. But the young man had earlier been given special permission to sit for the Advanced Level Examinations while he was held in detention and awaiting trial. The examination results would be announced in about two weeks' time. A prison sentence at this point would dash all hopes of entering university for the young offender. In the end, Judge Patrick Chan decided to adjourn the case until after the results became available. As it turned out, the young offender was successful in securing an admission offer from one of the local universities. Justice Patrick Chan's final decision was to hand down a sentence for community service instead of imprisonment. He was of the view that the youth had already been held in detention for an extended period of time and that missing this opportunity for university education might also mean losing forever an important motivating force for him to reform and to abandon the life of an anti-social criminal.

We pay high esteem to those in our society who uphold impartiality of the law to ensure a proper balance between protecting collective interests and defending individual rights. But we pay special tribute to those who uphold both impartiality and humaneness to ensure a creative balance between the role of the law as retribution and the role of the law as rehabilitation, to reflect the true spirit of the law. Justice Patrick Chan rightly believes that it is equally important for the law to promote the well-being of society as well as the well-being of individuals in society. The two do not always coincide. But they are not mutually exclusive. The law has a duty to harmonise the two in the best possible way.

We honour Justice Patrick Chan because of the outstanding quality of his jurisprudence, his integrity and his humaneness. He reminds us of what the Chinese sage, Mencius, has said about the complementary role of virtue and the law for good governance: "Virtue alone is not sufficient for government; The law unaided cannot make itself effective" (*Mencius* 4A1)

Mr Chancellor, in recognition of his significant contribution to the rule of law, justice and the humanity of our society, it is my great honour to present Justice Patrick Chan to you, for the award of the degree of Doctor of Laws, *honoris causa*.