

## JUDICIAL REMUNERATION

Essential feature of a common law jurisdiction is the need for judicial independence both actual and perceived. A very important mechanism in that process is the protection of judicial salaries from external/political forces.

The spectre of interference with judicial salaries either individually or collectively looms large in the mind of all lawyers who cherish the traditions of judicial independence and integrity. However improbable it may seem at the present time that there should be any such interference in Hong Kong with judicial salaries nevertheless the opportunity should be taken to dispel any prospect of this occurring.

Every effort should be made to attract suitable candidates to the Bench and candidates from the

**private sector should not be deterred by the concern that their salary on the Bench may be reduced for reasons beyond their control.**

**Judges at District Court level and above are prohibited from returning to the private sector after retirement from the Bench. Accordingly they are even more dependent upon their judicial salaries than judges in other jurisdictions.**

**The independence of the judiciary including the inviolability of judicial salaries has been a vital part of the judicial systems of almost all successful common law jurisdictions for very many years.**

**The Law Society has carefully considered the proposals in the report by Sir Anthony Mason. The report is detailed and provides a comprehensive view of the practice in common law jurisdictions worldwide.**

**The major exception to the generally accepted principle elsewhere is that of Canada. In that jurisdiction the bar to reduction in judicial salaries is qualified in so far as any reduction must be approved by an independent body whose findings whilst not binding require a heavy burden of a rationality test to be discharged if there is to be a departure from the findings. However the criteria to be applied to that rationality test is unclear and leaves scope for undesirable debate.**

**The Beijing Statement of Principles of Independence of the Judiciary in the LawAsia Region is more limited than the Canadian qualified prohibition in that it requires additionally the consent of all the affected judges before any reduction being part of a general reduction of public salaries can be passed. This has the added disadvantage of potentially sowing the seeds of dissent within the ranks of the judiciary and**

**is not thought to be appropriate.**

**The Law Society accepts that there are those within the community who consider that the judiciary should bear the burden of the hard times in common with the remainder of the public. However this sentiment is outweighed by the paramount requirement to demonstrate to the worlds that Hong Kong has a judiciary which is independent and whose terms of office ensure that they are free from the constraints placed upon others in the public sector whose conditions of service including salary are susceptible to the vagaries of political thought and sentiment or to winds of change brought about by reasons other than economic factors.**