CHAIRMAN’S LETTER

Whoosh! That appears to be the sound of the last year passing, it being difficult to believe that over 11 months have passed since I became Chairman. It has been a busy time, but I have at least perhaps been spared some of the political hot potatoes that were thrown at some of my predecessors.

As members will know, 2009 has been an eventful year, culminating in the Bar Mess held to celebrate the 60th Anniversary of the foundation of the Hong Kong Bar Association.

The Bar Mess was, we think, the largest ever by number of members attending – nearly 300, including guests. It was a great evening, with delightful ‘vignette speeches’ by many former Chairmen, a wonderful face-changing act, live music, good food and wine. The organisers, to whom all credit was given on the evening, put on a great show.

But of course, the year 2009 has not all been about parties. In April, the Civil Justice Reform was implemented with a view to increasing the efficiency and cost effectiveness of the judicial process in relation to civil proceedings in the High Court and District Court levels. As part of the Reform, the courts will be encouraging parties to opt for alternative dispute resolutions, e.g. mediation. Some members see this as a challenge to their practice, but others consider it as a prompt for us to explore opportunities outside the local court rooms. While the impact of the Reform on the Bar remains to be seen, I agree with the views of Mr Geoffrey Vos Q.C. that there are opportunities in the region through which we may utilise our expertise in the common law and develop Hong Kong as a regional centre for dispute resolution.

For myself, and in particular following the successful Commonwealth Law Conference held in Hong Kong in April, it seemed to me that the existence and reputation of the Hong Kong Bar must be reinforced very visibly internationally. I have travelled to several countries to take part in ceremonies and conferences in the hope that Hong Kong does not become a forgotten jurisdiction, or that the Hong Kong Bar does not become an overlooked profession. In these days of ready international exposure afforded by easy travel and internet access, members should be encouraged to travel to relevant conferences making the case for legal work in Hong Kong, including by barristers.

As we approach 2010, there are now almost 1,100 practising barristers. It is a growing task for the Bar Council and the Bar Secretariat to administrate and regulate those members. We are lucky that we have dedicated staff, and numerous members who volunteer considerable amount of time, to ensure that the profession is competently run. I would like to take this opportunity to thank members of the Bar Council and the Bar Secretariat for their invaluable assistance and wish all the readers a happy and prosperous New Year!

Russell Coleman S.C.  
Chairman  
December 2009
院以外的機遇。雖然民事司法制度改革對大律師界的實質影響有待觀察，但是我同意Geoffrey Vos御用大律師所提出的觀點：香港作為亞洲少數的普通法地區有其優勢，大律師界應該充份利用獨特的普通法經驗，發展香港成為亞洲地區首屈一指的和解中樞。

四月份英聯邦法律會議後我尤有感觸，覺得業界應該積極提高香港律師的國際聲譽和知名度。我曾經到訪多個國家參加各類型的典禮和會議，推廣香港大律師。現在互聯網和跨境交通都非常發達，同行應該多出訪，參加各地會議和代表香港律師界，這當然包括大律師在內。

二零零零年前夕，約有一千一百名執業大律師。大律師公會和執行委員會的公職是要對業界進行自我規管。公會因會員無私的貢獻和秘書處員工優秀的表現而能有效率地處理業界事務，在此我謹對執行委員會和秘書處的同事致謝。並祝各位讀者新年快樂，身體健康！

高浩文資深大律師
大律師公會主席
2009年12月
An eventful year has come and gone. In 2009, we celebrated the 60th Anniversary of the Bar Association, we cheered for the conferment of Honorary Life Memberships and Life Membership to those who have rendered outstanding service to the Bar, and we congratulated the three silks appointed this year.

In 2009 we also experienced the implementation of the Civil Justice Reform ("CJR") which brought about both challenges and opportunities to members of the Bar. A significant aspect of the CJR is the emphasis on alternative dispute resolution. In his article, Mr Leung Hing Fung, Vice-Chairman of the Hong Kong Mediation Council, provides useful guidance on counsel's role in mediation, one of the most popular means of alternative dispute resolution.

On a similar note, Geoffrey Vos QC shares insightful suggestions on what changes barristers in Hong Kong should undertake to keep pace with the changing global society, and how we can make better use of the opportunities in the Greater China region.

2009 is also the year in which we mourn the loss of Albert Sanguinetti and Robert Wei S. C., both honorary life members of the Bar, wonderful friends and mentors for many. In a moving obituary, the Hon. Mr Justice Bokhary PJ recounts many fond memories and pays tribute to his life-long friend, Albert. The Editorial Board also send our deepest condolences to Mr Wei's family.

The year 2010 will surely be a year of anticipation. I would like to take this opportunity to wish all of you good health and every success in the New Year!

Finally, I would like to thank all the contributors, members of the editorial committee, my friend Ms Helen Yu who volunteered to translate some of the articles to Chinese, as well as Ms Rani Romani and Ms Doreen Fan of the Bar Secretariat for their invaluable assistance.

Zabrina Lau

2009年對大律師公會來說是重要的一年。在慶祝公會六十年週年紀念同時，為表揚公會和香港司法界貢獻之表表者，公會頒授了榮譽永久會員及永久會員資格。我們亦有三名會員獲委任為資深大律師，值得恭喜。

2009年四月，香港高等法院和區域法院推行民事司法改革制度，我們因此亦面對許多挑戰和機遇。改革制度中重要一環，是鼓勵當事人選擇另類解決程序。香港資深會副主席梁偉賢先生在他的文章提供寶貴的指導，讓大律師在解決過程中，扮演更有效的角色。

此外，對於香港大律師怎樣和國際社會與時並進，更有有效把握大中華地區的機遇，Geoffrey Vos QC在他的文章提供許多啟發性的提議，值得我們參考。

我們亦為公會榮譽永久會員Albert Sanguinetti及華文教授資深大律師的離世而難過。在許多人的心目中，他們既是良師，又是益友。終審法院常任法官包致金法官在本刊中對他的好友Albert致以嚴肅的敬意，編輯委員會亦向華先生的家人致以深切的慰問。

2010年將會是令人期待的一年。
我在這裡謹祝各位身体健康，萬事如意！

最後，我謹衷心感謝所有投稿的筆者和編委會每一位成員。我也感謝我的好友余皓暉小姐，義務幫助翻譯的工作。另外，我亦多謝公會秘書處的Rani Romani小姐和范秀琴小姐寶貴的幫忙。

劉勝欣大律師
2009 HKBA Life Member and Honorary Life Members

Life memberships and Honorary Life Memberships are conferred on persons who, in the opinion of the Hong Kong Bar Association, rendered outstanding service to the HKBA or to the administration of justice in Hong Kong, and the proposal to confer such honours must be made by at least seven Members of the Bar, of whom at least three shall be Senior Counsel.

In early 2009, the HKBA awarded Life Membership to Dr Henry Hu and Honorary Life Memberships to the Hon. Mr Justice Litton GBM, Non-Permanent Judge of the Court of Final Appeal, the late Robert Wei S.C. and Richard Mills-Owens S.C. A reception was held on 22 April 2009 at the Hong Kong Club to honour the four recipients.

Dr Henry Hu

Dr Hu studied law in the Central University of Political Sciences in China. Soon after he married his wife, Dr Chung Chi-yung, they both went abroad to study in the University of Paris in France and attained doctoral degrees in law. Dr Hu subsequently went to the United Kingdom and was admitted as a barrister of the Middle Temple. He was called to the Hong Kong Bar in 1955.

Dr Hu is an expert in Chinese Law. He has been taking up public duties actively since the 1960s and has served as a member, by popular vote, (and later also the Vice-chairman) of the Urban Council and the Legislative Council. In 1971, Dr Hu and his wife decided to devote themselves to providing quality tertiary education to students in Hong Kong and founded Shue Yan College. In 2006, Shue Yan College was accredited by the Government as the first private university in Hong Kong and its name was changed to "Hong Kong Shue Yan University". Their contribution to education was further recognised in 2007, when two asteroids (discovered by American Astronomer Yeung Kwong-yu) were named after them (34778 Hu Hung-lik, 34779 Chung Chi-yung).

For his achievements, Dr Hu has been awarded the Gold Bauhinia Star and an OBE, as well as appointed as Justice of the Peace. In 2008, he was awarded the Great Bauhinia Medal, the highest award in the territory for a private individual, for his life-long dedication and contribution to public and community service.

The Hon. Mr Justice Litton NPJ, GBM

Mr Justice Litton was born in Hong Kong and received his education in Hong Kong at Diocesan Boys' School. He continued his education at King's College, Taunton and then at Merton College, Oxford. In 1959, he was called to the Bar as a member of Gray's Inn and was admitted to the Hong Kong Bar in 1960. Being an eminently successful trial lawyer, he was appointed a Queen's Counsel in July 1970, 10 years after being called to the Hong Kong Bar. He was elevated to the bench in September 1992 as a Justice of Appeal and it was the first time in Hong Kong's legal history that a barrister was appointed directly to the Court of Appeal. In 1995, he was appointed Vice-President of the Court of Appeal. In July 1997, he was appointed a Permanent Judge of the Court of Final Appeal, and he now sits as a Non-Permanent Judge in the Court of Final Appeal.

Mr Justice Litton has been a very active member of the Bar Council and served as its Chairman from 1991 to 1993, from 1977 to 1980 and again from 1983 to 1985. He co-founded the Hong Kong Law Journal with Gerald de Basto Q.C., and a group of legal practitioners and served as its Editor-in-Chief for 22 years until he was called to the Bench.

He was appointed a Justice of the Peace in 1989 and was made a CBE in 2001. In 2000, he was also awarded the Great Bauhinia Medal. He is married and his wife Linda Siddall was a founder and Director of Friends of the Earth in Hong Kong.

Robert Wei, SBS, Q.C., S.C.

Mr Wei was called to the Bar in the United Kingdom in 1959. He was admitted to the Hong Kong Bar in 1964 and appointed Queen's Counsel in September 1979 together with another Honorary Life Member of the Hong Kong Bar Association, Mr Richard Mills-Owens S.C., and Mr Martin Lee S.C. It was the first time that three Queen's Counsel were appointed in Hong Kong on the same day.

Mr Wei was a Crown Counsel in the early days of his career and appeared regularly in the criminal courts. He later commenced private practice and adopted a predominantly civil practice. The scope of his practice covered general civil litigation such as general civil procedure, contract and tort disputes, and landlord and tenant matters.

He was the Chairman of the Inland Revenue Board of Review. In 1998, he was awarded a Silver Bauhinia Star for his long and dedicated public service and for his valuable contribution to the development of revenue law and the legal profession in Hong Kong. He was also appointed as a Justice of the Peace.

Mr Wei passed away in December 2009.

Richard Mills-Owens Q.C., S.C.

Mr Mills-Owens is the son of the former Court of Appeal judge the Hon. Mr Justice Richard Hugh Mills-Owens JA. He was called to the Bar in the United Kingdom in 1961. He joined the Hong Kong Bar in 1965 and was appointed Queen's Counsel in September 1979 on the same day as Mr Robert Wei S.C.

Mr Mills-Owens was a member of Bernacchi Chambers and he later became one of the founding members of Temple Chambers. He had a wide range of civil practice including general civil procedure, contract and tort disputes, agency and banking and finance matters. He was dedicated to the development of talents in the legal profession as many of the current judges and senior counsel were his former pupils.

He has served as a member of the Inland Revenue Board of Review and a Justice of the Peace. He has a keen interest in collecting antiques.

Minnie Wat and Joseph Lee
2009年香港大律师公会永久会员和荣誉永久会员简介

香港大律师公会永久会员和荣誉永久会员会籍旨在表扬对大律师公会和香港司法有重大贡献之行业先驱，其提名程序非常严谨，授勋前须由最少十位大律师公会成员提名，而且其中三位提名人士必须是资深大律师。

2009年年初，香港大律师公会荣誉荣誉永久会员会籍授予胡鸿烈博士，香港终审法院非常任法官烈缅德法官， Apps王家琛大律师和奥霖斯资本大律师。授勋仪式于4月22日在香港会举行。

胡鸿烈博士

胡鸿烈博士於中正义政治大学修读法律，刚结婚的胡博士与妻子楼美然女士同赴法国巴黎大学深造，两人均获颁法律博士学位。彼后胡博士留欧英国并在英国Midde Temple取得大律师资

格。他在1955年在香港取得法律执照。

胡博士对中正义法律尤有研究。自1960年代起胡博士就积极参与公共事务，曾任香港市政局及市政局委员会副主席；也曾是立法会议员。

1971年，胡氏伉俪决定致力教育事业，为香港学生提供优质高等教育。他们携手创办了基督教书院。至2006年，香港特区政府为胡氏夫妇颁发香港第一所私立大学，胡氏伉俪为教育事业鞠躬尽瘁，其贡献於2007年再被肯定。胡博士夫妇在中山大学及香港特别行政区教育及科研制度下的教育贡献，展现胡氏夫妇为香港社会作出之重大贡献。

奥霖斯资本大律师


为终审法院法官，现为终审法院非常任法官。


为终审法院法官，现为终审法院非常任法官。

烈缅德法官為御用大律师。烈缅德法官在御用大律师职业中，现为御用大律师。他於1995年成为御用大律师。1997年9月受任上诉法庭法官。1995年，他被委任为上诉法庭副庭长。1997年他被任

为终审法院法官，现为终审法院非常任法官。
Mr Kumar Ramanathan SC, Mr Yeung Kar-hung Keith SC, and Mr Nicholas James Cooney SC were appointed new Senior Counsel in 2009, amongst eight candidates. With these three appointments, the total number of practising Senior Counsel stands at 85, representing about 8% of the total membership of the Bar. Since 1997, 54 Senior Counsel have been appointed.

Although these three new Silks are no strangers to members of the legal profession, some of us probably do not know about the more interesting facets of their lives. Below are their "unofficial profiles" gathered by the Bar Chairman, Mr Russell Coleman SC, and shared at the admission ceremony on 16 May 2009.

Kumar Ramanathan S.C.

Kumar was born in Penang, Malaysia. As the son of a journalist father, Kumar had an itinerant childhood, which charted the path of many destinations including Kuala Lumpur, Kota Kinabalu and Singapore before arriving in Hong Kong at the age of 15.

Kumar completed his law degree and PCLL at the University of Hong Kong, and was privileged to serve pupillage with Mr Denis Chang S.C. and the late Anthony Sedgwick QC, whom he describes as the two best mentors a junior barrister could ever have as a guide through the early years of practice. They emphasised hard work, integrity and the importance of keeping one’s feet firmly on the ground whilst reaching for the stars.

Perhaps those very qualities — hard work, integrity, and being realistic with ambitions — are those for which Kumar is especially known, in addition to his unfailing courtesy and his ability to seek the perfect balance between duties to his clients and the Court.

Kumar has enjoyed a vast array of work, including both civil and criminal practice (where he was thought of as a Houdini with juries). But over the last 15 years or so his practice has principally been in the field of personal injuries and medical negligence. His cross-examination skills are known to have foiled many a malingerer.

Kumar has sat as a Deputy District Judge and as a member of the Inland Revenue Board of Review, as well as a Chairman of the Buildings Appeal Tribunal. He has served on the Bar Council.

Apart from the law, Kumar is also active in various charitable organisations. He is an active badminton and tennis player, but also a keen bridge player with which he hopes will stave off senility or Alzheimer’s in the years to come.

In 2009 a year earlier, with the appointment of new Silks, Kumar Ramanathan SC, Mr Yeung Kar-hung Keith SC, and Mr Nicholas James Cooney SC, the total number of practising Senior Counsel stands at 85, representing about 8% of the total membership of the Bar. Since 1997, 54 Senior Counsel have been appointed.

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Kumar Ramanathan
S.C. and his family
Keith KH Yeung S.C.

Keith was born in Hong Kong. He completed his law degree and PCLL from the University of Hong Kong.

He has always enjoyed a “mixed” practice — not mixed in the sense that some of it is good and some of it is not, but in the lawyerly sense of encompassing both civil and criminal practice. The emphasis is on commercial cases, commercial fraud, securities and regulatory matters, as well as Chinese customary law and practice.

Keith is currently the Honorary Secretary and Treasurer of the Bar Council. As a man of pragmatism, Keith takes up many duties without most people realising how much he is doing. He is efficient; indeed — when he and his wife decided to start a family in the hopes of having two children, he arranged for them to arrive on the same day as twin girls.

Keith is a wine enthusiast, particularly the red wines from France. He combines the knowledge in wine with skills in advocacy. At each court session he would gauge each judge by comparing him or her to a particular bottle of red wine with its own particular characteristics, so as to be able to tailor his advocacy to that bottle’s taste.

Nicholas Cooney S.C.

Nick was born and raised in Australia. He completed his degree at the University of Adelaide and obtained the qualification to practice at South Australian Institute of Technology, which might indicate why he has developed a practice focusing in construction law.

Nick practised in Adelaide from 1981 until 1993, when he moved to Hong Kong to join the then Attorney General’s Chambers (now the Department of Justice), where he remained until commencing private practice at the Bar in November 2000.

His areas of work have included town planning, land law and valuation, contract and tort, a growing practice in public and administrative law, but with a particular emphasis on construction. Nick is a Council Member of the Society of Construction Law Hong Kong. He is also the Chairman of the Buildings Appeal Tribunal.

In his free time, Nick enjoys playing golf. He also plays the bass in a rock band called “The B Sample,” a name originated from the Athens Olympic Games when athletes who failed drug screening asked for the test to be performed again on the B sample.
The Court and the Bar Visit Programme

- Paul Shieh S.C. and Richard Khaw with students from True Light Girls' College

- Herbert Au-Yeung and Angela Mak with students from Pentecostal Lam Hon Kwong School

- Frederick Chan and Bernard Mak with students from Our Lady of Rosary College

- Herbert Au-Yeung and Queenie Lau with students from SKH Lui Ming Choi Secondary School
School Visit Programme

- Paul Shek S.C. at Sir Ellis Kadoorie Secondary School (West Kowloon)
  石永泰資深大律師於官立嘉道理爵士中學(西九龍)

- Alan Leung S.C. at St. Paul's Co-Educational College
  梁家傑資深大律師於聖保羅男女中學

- Horace Wong S.C. at Heep Yunn School
  黃曉強資深大律師於慈雲中學

- Frederick Chan at St. Joseph's College
  梁楚輝大律師於聖若瑟書院

- Jennifer Tsang at Wai Ku College
  葉昭珍大律師於嘉樂英文中學

- Giles Summan at Island School
  蘇明哲大律師於聖士提反書院

- Paul Shek S.C. at St. Joseph's College
  for a talk on the rule of law
  石永泰資深大律師於聖若瑟書院講解法治精神
THE ROLE OF COUNSEL IN MEDIATION

Litigation practice is ever changing and the choice in the ways to resolve disputes is expanding. Barristers, as a profession actively involved in litigation, may feel the need to be able to participate in these alternative procedures. Mediation is currently one of the most popular dispute resolution processes chosen by disputants. With Practice Direction 31 taking effect on 1 January 2010, which encourages litigants to resolve their disputes through mediation, it is expected that role of mediation will become even more important in the realm of dispute resolution.

One of the classic roles of counsel is to “fight” for their clients’ best interests. Apparently this is in conflict with the purpose of mediation, which is to settle but not to fight. However, in more precise terms, the purpose of mediation is to identify the best option to satisfy the parties’ needs which could be accepted for settlement. Apparently the only difference between the above traditional role and the purpose of mediation perhaps is only in how to achieve a result which is in the clients’ best interest, in other words, whether to “fight” or to “negotiate” for the purpose of getting the best interest. The author, in the spirit of mediation, would say but not attempt to argue, that when counsel are to participate in mediation, there are many ways that they could contribute for the purpose of obtaining the most optimal result for their clients.

Pre-mediation: Preparation of the case

There are many aspects in which counsel may assist in the preparation of the case for mediation. Counsel would need to explain to the client clearly the nature of mediation, discuss with the client the degree to which the client should participate in the process, who will attend the mediation and the possible and acceptable options of settlement. Counsel must get himself/herself know the case well and be able to provide the client an honest assessment of the strengths and weaknesses of the case. If possible, counsel should get an idea of the client’s bottom-line for a possible settlement before the mediation, instead of waiting for the embarrassing moment of an undecided client faced with a suggested option during the mediation.

Counsel may also assist in ensuring the legal requirements of the mediation are fulfilled. These may include areas concerning the terms of the mediation agreement, the execution of it and the confidentiality agreements to be signed by those participating in the mediation.

Pre-mediation: Preparation of the client

The preparation of client in mediation is no less important than in litigation. The client’s understanding of the purpose of and his/her role in mediation are the major factors affecting whether the mediation would be successful or not. Unlike in litigation, the client takes a more central and active role in the mediation process. An appropriately prepared client would be more effective in communication and more willing to express his/her issues and concerns in the negotiation process, thereby increasing the chance of a successful settlement. Counsel may sort out with his/her client during the preparation stage as to how much and when the client would participate in the oral presentation and negotiation in the mediation process. Counsel may also, with his/her input in law, manage the client’s expectations by giving the appropriate legal advice such as the likely quantum of damages.

Pre-mediation: Planning the strategy

As in litigation, there is always the question of what the client would want to achieve and how it could be achieved from mediation. Strategy in negotiation is important and counsel could assist in identifying the best strategy for the purpose of achieving these goals through the negotiation process, such as whether to take an aggressive or cooperative approach, or different approaches for different stages after considering various factors such as the bargaining positions of the parties, the legal merits of their respective cases etc.

During the mediation: Making the opening statement

A typical procedure in mediation is that the parties will be given an opportunity to make their opening statements concerning the case. Counsel’s assistance in making an articulate and logical statement could facilitate the client in presenting his/her case in precise terms to the mediator and the other party. Whether the opening statement is to be presented by counsel or the client is a matter to be decided after discussion with the client by considering different factors, such as the balance between the importance of a clear statement and the importance of direct communication and ventilation of grievances by the client.
During the mediation: Differentiating positions from interests

The basic nature of mediation is a facilitated negotiation process. To prove the allegations or claims made by the parties is therefore not its purpose. Very often these allegations and claims are nothing more than positions held out by the parties which may or may not be the best ways to address their interests. During the mediation process, counsel may assist the client to focus on their interests and not on their positions and to separate the "people issues" from the problems if possible.

During the mediation: Analysis of the situation

During the mediation, counsel may help the client to remain focused, calm and be as objective as possible. When necessary, counsel may also assist the client to shift their focus from their positions to the parties' respective needs and to generate options to satisfy those needs with a view to reaching settlement. By considering the situation, counsel may help the client to assess whether or not an offer is acceptable and what more could realistically be negotiated and agreed. Counsel may also guide the client to consider whether to accept an offer by reference to the best alternative to a negotiated agreement (BATNA) and the worst alternative to a negotiated agreement (WATNA). By reference to the balance between uncertainty of the outcome of litigation and the best possible legal entitlement, counsel may also help client to decide whether it is in his/her best interest to accept a particular option.

During the mediation: Settlement stage

Counsel may make use of his/her professional training to assist the client in preparing the settlement agreement and making sure that all the issues in the disputes are adequately dealt with. He/she should ensure that the settlement agreement contains terms that could realistically be enforced and the document is properly executed. He/she should also ensure that there is provision for contingency arrangement in the settlement agreement.

Salvage

Even if the mediation does not result in a settlement, counsel should endeavour to get the most that could be salvaged from the process. For example, even a partial agreement could narrow down the issues which will have to be dealt with in litigation. Getting the parties to agree on as many issues as possible could certainly save considerable time and costs for the client in subsequent proceedings, if any.

Conclusion

The above is an attempt by the author to identify the areas where counsel may participate in mediation and is not intended to be an exhaustive list. The role of counsel in mediation is still a developing area. Whether or not and to what extent counsel will participate in mediation depends on a large extent on individual member's receptiveness of the concept of mediation and understanding of the nature of the process. But ultimately it is what is in the client's best interest that counts.

LEUNG Hing Fung
Vice-Chairman
Hong Kong Mediation Council
Hong Kong International Arbitration Centre
調解過程：開場引言

通常調解的第一個步驟是開場白，雙方都有機會發表意見和表明立場。在調解前，律師應當先和當事人溝通，決定在這環節由律師代表當事人發言。由於律師具有職業經驗和能力，他可以根據當事人的利益和實際情況，適當的調解意見和建議。

調解期間：區隔主觀立場和實際利益

調解期間，雙方應當保持冷靜和客觀，專心一致的解決問題。律師應當幫助當事人從根本目的找出解決辦法。調解期間，雙方應當尊重對方的意見。在調解過程中，雙方應當互相尊重，不能主觀的立場，而應當客觀的考慮當事人的實際利益。最後，雙方應當從法律角度確定適當的指引，以衡量訴訟的未知性和當事人的法律權益。

調解期間：和解階段

律師可以協助當事人撰寫和解協議，從中肯定爭議中的大小問題都已經解決。律師應當確保和解協議的條文基本有效，雙方都能接受適當的協議。如合乎公約的一個，和解協議也應包括普遍條款。

調解不果：仍然雙贏

雙方不應試圖透過調解達成和解，律師也應該共同利用調解過程中所得的正面經驗，鼓勵雙方達成和解協議，達成原先的和解，使訴訟不同和解協議的時間和費用相對減少，相對雙方投票都是雙贏局面。

總結

筆者在以上短文解釋了律師可以參與調解，可是以上所列並非涵蓋所有可能性，因為律師在調解過程中所扮演的角色還在發展中。一名律師在調解中參與的多少及如何參與是業界對調解的接受程度和律師個人對調解的理解，當然，當事人的利益是最重要的考慮。
DOES THE HONG KONG BAR MAKE THE MOST OF ITS OPPORTUNITIES?

Having spent a fair amount of time in Hong Kong over the last few years, I have grown fond of the place. I have learnt a little about it. And whilst my normal rule is never to say anything too controversial in or about countries overseas, I shall break my usual rule and allow myself to say a little of what I really think.

My subject is the Hong Kong legal community and the Hong Kong Bar in particular. I should say first that I enjoy immensely my relationships with the Hong Kong Bar; I have great respect for the abilities and expertise of its members. My only grouse is that I think that more could be made of the huge advantages that are available in this region.

It is useful to provide a little background to the world scene into which the Hong Kong Bar fits. Post 1997, the Hong Kong legal system has become unique. It is a ring-fenced common law system operating within one of the largest civil law systems in the world. But 12 years of the guaranteed 50 years of the Basic Law have been used up. Put the other way around, there are only 38 years left during which this system is guaranteed. So, it is pretty important for the Bar in Hong Kong to persuade the Mainland Government that the common law system offers something that they cannot do without. The consequences if it fails to do so could be serious indeed. I believe, however, that the common law system, as practised in Hong Kong, has much to offer Mainland China, and much to offer the world.

Arbitration is probably more important than litigation. But there are actually less international arbitrations than most people think. In 2008, the American Arbitration Association (AAA) took on 621 new matters, the Hong Kong International Arbitration Centre (HKIAC) took on 448, but many were dot com related. The China International Economic and Trade Arbitration Commission (CIETAC) took on 548, but many are small domestic focused matters without non-Chinese arbitrators. The London Court of International Arbitration (LCIA) took on 213. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) took on 74. The Singapore International Arbitration Centre (SIAC) took on 71, and the International Chamber of Commerce (ICC) took on 663 new matters, but its figures do not reveal how many were international, rather than domestic – at a guess some 300 of them may have international parties. In addition, there are unknown numbers of arbitrations arranged ad hoc, and by less well-known national institutions.

These figures are deceptive because what lies behind them are tens of thousands of international contracts with foreign choice of law and arbitration clauses. But it is clear, at least, that there is much room for growth in the international arbitration business emanating from China. The question is how this can be achieved.

I am sure that the Hong Kong Bar is in an ideal position to spearhead the efforts to persuade businesses and legal practitioners in China that they need the common law. This may not be as easy as it seems for a number of reasons: first, the law of the PRC is not a bad system, and it has state protection.

Secondly, China’s businesses only really require the common law because international investors feel more comfortable choosing a law with which they have familiarity. Thirdly, there is huge competition between jurisdictions for the business. Fourthly, and most importantly for my purposes, some Mainland and overseas lawyers regard Hong Kong lawyers (and the Hong Kong Bar especially) as inward looking, and as having an unhealthy focus on the preservation of its system at all costs, rather than on selling itself across its home country if not the globe.

As I have said, the skill and expertise of the HK Bar is not in doubt. But its services are expensive and inaccessible. It comes across as haughty and unapproachable, and rather hidebound by its own (dare I say it) old-fashioned procedures.

This is where regulation comes in. The English Bar has demonstrated that the preservation of every single tradition is unnecessary to maintain the high quality, and the ethos and
ethics. We have established a ring-fenced regulatory body, the Bar Standards Board, to separate representation from regulation. We can give our clients – at home and abroad – confidence that the profession is not regulated in its own interests: that complaints will be dealt with impartially and independently, and that the rules will not be manipulated for the benefit of lawyers, but for the benefit of clients.

Restrictive practices should not be allowed to make the system moribund, or to prevent forward looking business practices that would allow overseas customers to use the profession more efficiently and at lower cost.

These changes are overdue in Hong Kong. There is a brave new world out there – even during this global recession – waiting for the common law system to open up to those that would use it in civil law countries – including specifically the Mainland.

But the Hong Kong legal profession needs to show business and lawyers in the Mainland that the advantages of the adversarial – independent – fearless common law system – are not outweighed by the disadvantages of restrictive practices, expense, cumbersome procedures, seemingly designed for the benefit of lawyers, judges and arbitrators, rather than the clients and businessmen seeking to resolve their problems quickly and efficiently, before they move on.

There are some practical ways in which the Hong Kong Bar could reform itself to become leaner and fitter and more suitable for the new global world to which it must aspire.

First, the old system of regulation is now outdated and does not inspire confidence. Lay people need to be closely involved in the complaints process. The rules need to be made by independent people to give clients confidence that unnecessary restrictive practices are not maintained for the benefit of the profession. The sooner a regulator separate from the HKBA is established, the better it will be.

Secondly, the rule book needs careful re-evaluation. All rules should be scrutinised to ensure that they are justified in the public interest. This can only be done by non-lawyers. Lawyers have shown themselves too easily persuaded that archaic practices are necessary to protect standards, when in fact their only effect is to protect lawyers. Some examples will make the point clear – and even small changes can affect the way in which the system is viewed by those outside it. It cannot possibly be necessary for barristers to remain in their Chambers rather than meeting clients wherever is convenient to the clients. Barristers do not need to work with solicitors in every case: sometimes they do, but not always. Extinct communication methods should be consigned to history. Businessmen use email almost universally – so should the Bar.

The new era of regulation is required to streamline legal services and make them cheaper and more efficient. Culture change is required to make the Hong Kong Bar more attractive to businesses and lawyers in China and other civil law jurisdictions in the region. I believe that these modernisations of practice and approach will go a long way to help Hong Kong win the argument that common law systems (and Hong Kong in particular) can deliver better solutions for clients and better outcomes, more speedily and more economically.

To conclude, the Hong Kong legal profession can capitalise on the fact that Mainland businessmen and their lawyers have to include overseas choice of law, jurisdiction and arbitration clauses in their international contracts in many cases. But they need to work harder to persuade those businessmen and lawyers that the Hong Kong common law system is fit for purpose. If they do not, U.S. or European systems will win out. There is a big prize for the Hong Kong Bar if it reforms itself now, and makes Hong Kong the overseas jurisdiction of choice for the Mainland’s international contracts.

Geoffrey Vos QC
24th July 2009

(This article is based on a speech delivered to the Hong Kong Bar Association on 23 April 2009. The author was chairman of the Bar Council of England and Wales in 2007)
香港的大律師能否更有效地利用他們的機會？

在香港，大律師的職業生涯通常是一個充滿挑戰和機會的過程。他們在這個職業中扮演著重要的角色，不僅是為客戶提供法律建議，還在社會和公共政策方面發揮著重要作用。然而，這個職業也面臨著一些挑戰和問題，需要有意識的訓練和努力才能解決。

首先，香港的大律師需要不斷更新自己的知識和技能，以便能夠應對日益複雜的法律問題。他們需要不斷學習新法律和判例，及時更新自己的專業知識。

其次，香港的大律師需要具有良好的道德品質和職業精神。他們需要守護公正、廉潔和敬業，作為法律系統的核心支柱。

此外，香港的大律師還需要具備良好的溝通和協調能力。他們需要能夠與客戶、同行和對手有效地溝通，並且能夠在複雜的法律情況下協調各方利益。

最後，香港的大律師需要具有強烈的社會責任感。他們需要通過自己的工作貢獻社會，為香港的社會和经济发展做出貢獻。

總體而言，香港的大律師需要不斷努力，以確保他們能夠更有效地利用他們的機會，為香港的法律系統和社會做出更大的貢獻。
A Tribute to Albert Sanguinetti by the Hon Mr Justice Bokhary PJ

In the long journey through life which he took, Albert Sanguinetti did many splendidly outrageous things. I have often told of them. Of some, I had been an eye-witness. Others were told to me by Albert himself. Someday I will start to tell of these things again. But the present moment is a time for quieter reflection.

I met Albert on the first day of the Hong Kong half of my pupillage following my return from the Temple. We became friends from that day onwards. My wife and I counted him among our best friends. He was always “Uncle Albert” to our children.

As an advocate at the criminal bar, Albert was an elemental force. Those who remember him from his earliest days at the Bar also spoke highly of his accomplishments on the civil side before he began to confine himself to criminal practice.

He led me on a number of occasions. And he always insisted on putting the word “led” within inverted commas. There was no reason to do so. After I took silk, I led him once. You can put that within inverted commas, if you like. We won the case, and one of the strongest things such on our side was said by Albert – while sitting down but loudly enough to be heard very clearly by the Court of Appeal.

Albert personified everything good at the Bar. He was tireless in the pursuit of justice – in the courts and in society at large.

It is undeniably true that he was not a religious man. Indeed he would become very angry if anyone suggested that he was at all religious. But he had a philosophy so good, so kind and so inclusive as to be difficult to distinguish from religiosity of the most admirable type. So maybe…

I am but one among his many, many friends who treasured his friendship, held him in the highest esteem, will miss him very sadly indeed and will never forget the unforgettable man he was. Albert Sanguinetti has passed into legend. It is a legend that will live on in the annals of the Bar to inspire future generations of this noble profession.

懷緬：Albert Sanguinetti

A lbert Sanguinetti已經走完他漫長的一生，當中他經歷過多少多少辛酸於又美好的事。他充滿傳奇的人生令人津津樂道，而我亦有幸目睹其中僅僅。Albert曾經親口告訴我他對人生的看法——有一天我會為大家娓娓道來——但此刻我希望對他致以敬意的敬意。

我在倫敦完成了大律師的實習後回到香港，在開始第二階段實習的第一天就認識了Albert。從此以後我們就成為了朋友。我和內子都很Albert為我們最交心的朋友，我們的孩子都稱他為Uncle Albert。

Albert是刑事大律師界中的中堅份子。那些早就認識Albert的同行也不忘他早期非常成功的民事法事業，但是他最後願意專門處理刑事訴訟。

在執業期間，Albert曾經在多次訴訟中領導我（雖然謙和的他堅持自己算不上是「領導」）。成為了資深大律師後，我「領導」了他一次，那次我們打贏了，因為Albert在辯護過程中最關鍵的時候，提出了對我們最有利的論據。他傑出的回應使我們大為驚豔。

他來香港回憶期間說這些論點，而且剛好能夠令大廳上的法官聽到。

Albert是大律師界中之表表者。不論為律師或是作為香港社會一員，他都鞠躬盡瘁，追求公義。

Albert絕對沒有宗教信仰。任何人只要看出他有信仰就會為他非常生氣。可是他正義的人生觀、厚道和包容愛最最愛的信仰。

我只是Albert衆多好朋友中之一粟，但我相信他所有的摯友都對他致以最高的評價，都為他的離去而傷感。

他是一位令人難忘的人我們，我們永遠都會懷念他。他雖然離開了我們，卻留下了一個美好的傳奇。願他豐富的人生為我們律師界之後輩帶來莫大的啟示。

終審法院常任法官包毅成法官